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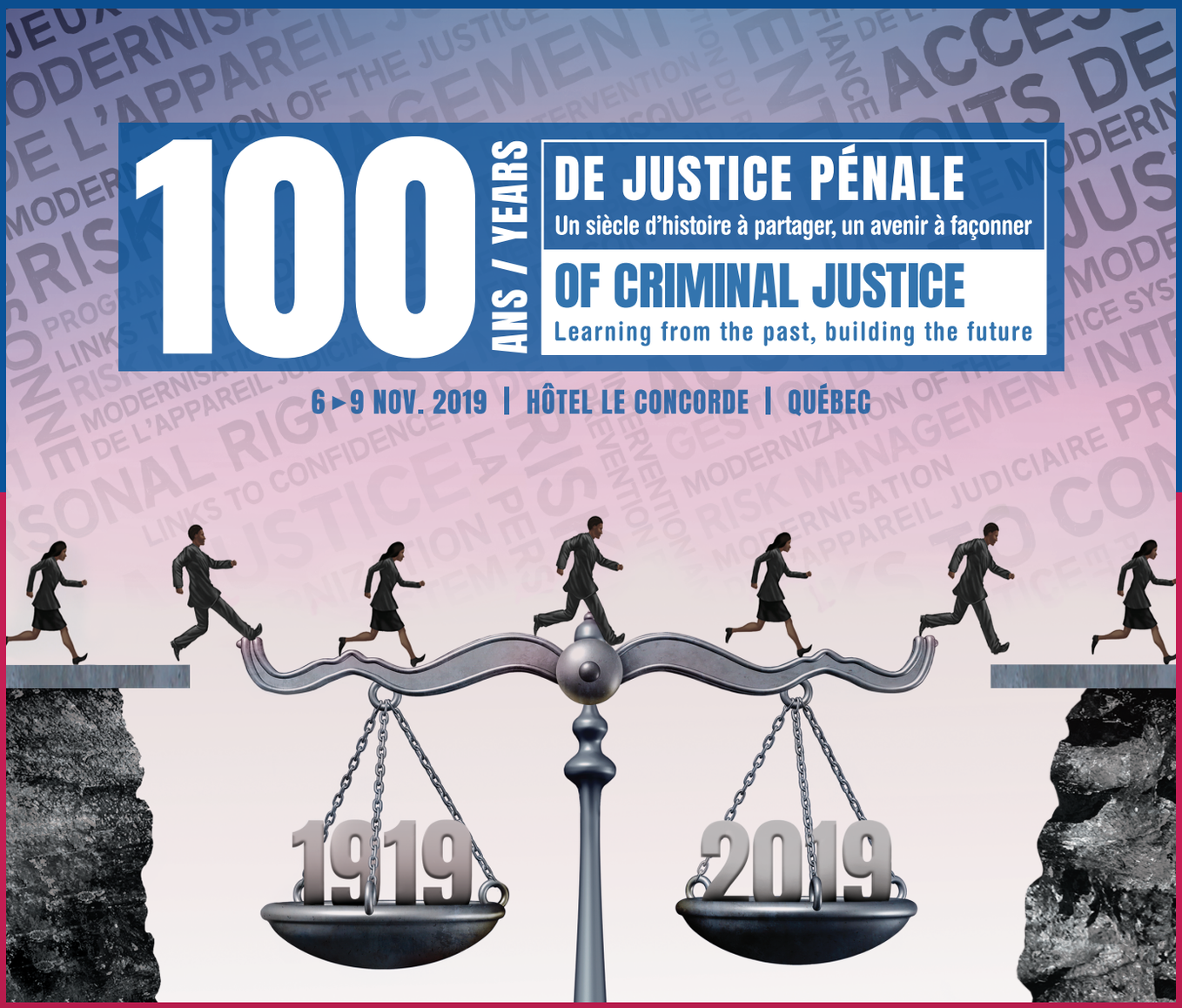
# JUSTICE

Vol.34 **ACTUALITÉS - REPORT** No.2

CANADIAN CRIMINAL JUSTICE ASSOCIATION - ASSOCIATION CANADIENNE DE JUSTICE PÉNALE

**CONGRESS 2019 / CONGRÈS 2019** INTERVIEW WITH ANDRÉ NORMANDEAU REFORM / RÉFORME

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The JUSTICE REPORT contains information of value to Association readers and the public interested in matters related to the administration of justice in Canada. Opinions expressed in this publication do not necessarily reflect the Association's views, but are included to encourage reflection and action on the criminal justice system throughout Canada.

For more information on the activities of the CCJA, please contact:

L'ACTUALITÉS JUSTICE renferme des renseignements utiles aux lecteurs de l'Association et au public qui s'intéressent aux questions relatives à l'administration de la justice au Canada. Les opinions qui sont exprimées ne reflètent pas nécessairement les vues de l'Association, mais y figurent afin d'encourager à réfléchir et à agir sur la justice pénale dans tout le Canada.

Pour obtenir de plus amples renseignements sur les activités de l'Association, veuillez communiquer avec :

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# JUSTICE

Vol.34 **ACTUALITÉS - REPORT** No.2



**CCJA AWARDS - NOMINATIONS - LES PRIX DE L'ACJP • P4**

**EDITORIAL - ÉDITORIAL • P5**
By - Par Irving Kulik

• • • • • • • • • • • • • • • • • •

***ENTREVUE DE L'ACJP AVEC ANDRÉ NORMANDEAU • P7***
Par Nancy Wright
English Abstract • P12

• • • • • • • • • • • • • • • • • •

***SNC – Lavalin, the State and Remediation Agreements (RAs) • P13***
***SNC – Lavalin, l'État canadien et les accords de réparation (ARs) • P16***
By / Par François Boillat-Madfouny

***A first step towards "What to do about prison care systems, child welfare care systems and juvenile care systems?" • P19***
By Jon Friel
Résumé français • P21

***Biological Witness: DNA Phenotyping • P22***
By Janne A. Holmgren
English Abstract • P25

***Prison, the New Asylum: Canada's Response to Mental Health Problems Among Convicted Persons • P28***
By Brandi Chrismas
Résumé français • P32

***Un mot ou deux sur les revues francophones en criminologie (1948-2018) • P33***
Par André Normandeau
Résumé français • P36

• • • • • • • • • • • • • • • • • •

**YOUNG RESEARCHER CONTRIBUTIONS**
**CONTRIBUTION DE JEUNES CHERCHEUR(E)S**

***R. v. Gladue and R. v. Ipeelee: The Canadian CJS's Response to Indigenous Overrepresentation • P38***
By Brody Scott
Résumé français • P41

***Solitary Confinement as a Function of the State's Power Over Life • P42***
By Jennifer Moore
Résumé français • P46

***PRISON REFORM • P47***
By Marisa Linscott-Wiltshire
Résumé français • P49

• • • • • • • • • • • • • • • • • •

**COMING EVENTS - PROCHAINS ÉVÉNEMENTS • P51**


**CORRECTION NOTICE:**
**ISSUE 34.1**

**INTERVIEW with JOHN BRAITHWAITE** acquired a number of small errors and omissions during the transcription process. For example, the word "future" should have appeared in the following: "Dave Barrett, "future" Premier of the Province". We have replaced the online version at **justicereport.ca** and extend our heartfelt apologies to Mr. Braithwaite.

# CCJA AWARDS - CALL FOR NOMINATIONS*
# PRIX ACJP - APPEL DE CANDIDATURES*

**Deadline for nominations / Date limite de dépôt des candidatures**
**SEPTEMBER 1 SEPTEMBRE 2019**

**Info / Nomination Forms / formules de mise en candidature: ccja-acjp@rogers.com**

*To be awared at Congress 2019 / *À être décernés au congrès 2019

### THE SENATOR EARL A. HASTINGS AWARD
★ ★ ★ ★ ★
PRIX SÉNATEUR EARL A. HASTINGS

**To honour Canadians who do not work in justice but have made an outstanding contribution over many years to the Canadian criminal justice system.**

Honorer des Canadiens et des Canadiennes qui n'œuvrent pas en justice mais qui ont apporté une contribution exceptionnelle pendant de nombreuses années au système de justice pénale canadien.

### PUBLIC EDUCATION AWARD
★ ★ ★ ★ ★
PRIX D'ÉDUCATION DU PUBLIC

**To recognize persons who contribute to a better understanding among Canadians of the nature and necessity of a humane and effective criminal justice system.**

Reconnaître les personnes qui contribuent à une meilleure compréhension entre les Canadiens sur la nature et la nécessité d'un système de justice pénale humain et efficace.

### CRIME PREVENTION AWARD
★ ★ ★ ★ ★
PRIX DE PRÉVENTION DU CRIME

**The Crime Prevention Award recognizes individuals or organizations in Canada making significant contributions to the reduction of criminal behaviour and increased public safety.**

Reconnaître les individus ou les organismes qui ont contribuent beaucoup contribuer à la réduction du comportement criminel et à l'accroissement de la sécurité publique au Canada.

### RESTORATION AWARD
★ ★ ★ ★ ★
PRIX DE LA RÉCONCILIATION

**This award may be granted to victims or former offenders who have overcome the challenge of their past and made an exemplary contribution towards rehabilitation, restoration and a more humane and effective justice system.**

Ce prix peut être décerné à une victime ou à un ex-délinquant qui est parvenu à évacuer les difficultés de son passé et qui a contribué de manière exemplaire au processus de réhabilitation ou de réconciliation ainsi qu'à la réalisation d'un système de justice plus humain et plus efficace.

### WILLIE-GIBBS LIFETIME ACHIEVEMENT AWARD
★ ★ ★ ★ ★
PRIX WILLIE GIBBS POUR L'ENSEMBLE DES RÉALISATIONS

**To recognize meritorious contributions by CCJA members to the improvement of Canada's criminal justice system.**

Reconnaître les contributions méritoires des membres du CCJA à l'amélioration du système de justice pénale du Canada.

### RESEARCH AWARD
★ ★ ★ ★ ★
PRIX DE RECHERCHE

**To recognize individuals or groups having conducted valid research that has led to significant improvement within the Canadian criminal justice system.**

Reconnaître des individus ou des groupes ayant mené des recherches valides qui ont entraîné une amélioration significative au sein du système de justice pénale canadien.

### CERTIFICATE OF APPRECIATION
★ ★ ★ ★ ★
CERTIFICAT D'APPRÉCIATION

**To recognize individuals, members or non-members, who have made a significant contribution to the achievement of CCJA objectives.**

Reconnaître les individus, les membres ou les non-membres, qui ont apporté une contribution importante à la réalisation des objectifs du CCJA.

### THE ANTONY HOLLAND AWARD
★ ★ ★ ★ ★
LE PRIX ANTONY HOLLAND

**To recognize and promote the contribution of theatrical arts to the achievement of a humane and effective criminal justice system.**

Reconnaître et promouvoir la contribution des arts du théâtre à la réalisation d'un système de justice pénale humain et efficace.

# EDITORIAL

**IRVING KULIK**
CCJA Executive Director

Hopefully as you read this issue of the *Justice Report* we will all be close to summer and can forget the fairly dreadful, cold winter and spring. While I hope summer will be most enjoyable, my thoughts go to the fall, specifically November 2019.

As you should all know, between November 6 and 9 we will be celebrating our 100th anniversary at Congress 2019 in Quebec City with our partners at the Société de Criminologie du Québec. This event taking place in one of the most beautiful cities in North America, historic Quebec City, will be our largest in decades. Given the number of presentation submissions received, 150 plus, we have had to add meeting spaces and times. In fact, we will be opening Congress 2019 on Wednesday afternoon rather than the usual Thursday morning and going until at least noon on the Saturday. In addition, the number of keynote speakers will be unsurpassed.

We will be featuring a number of academic luminaries including Order of Canada recipient Tony Doob, Professor Pierre Noreau, Quebec judges Guy Cournoyer and Pierre Hamel, and Senators Kim Pate and Patti Laboucane-Benson. We will be opening Congress 2019 with the Chief Justice of Quebec, Madame Nicole Duval Hesler, and the Commissioner of the Correctional Service of Canada, Anne Kelly. The Correctional Investigator, Dr. Ivan Zinger, will be there and also the Ombudsperson of Quebec, Marie Rinfret, the Federal Ombudsperson for Victims of Crime, Heidi Illingworth, and mental health specialist, Dr. Anne Crocker. You will not see a more illustrious line-up anywhere else.

For our Friday night banquet, we have the distinct honour and privilege of an address from the Chief Justice of the Supreme Court of Canada, the Right Honourable Richard Wagner. This is not to be missed! And to ensure that you do not start packing before the absolute end, we will have a closing presentation on Saturday by the Honourable Senator Serge Joyal, whose knowledge and involvement in legal and constitutional issues goes back more than four decades.

Registration for Congress is now open, and I urge you all to register quickly, purchase your tickets for the banquet as it will likely be a sell-out, and book your rooms at the Hôtel Le Concorde. Further information and online links are found in the centrefold of this issue.

This issue contains a number of most interesting articles our editor, Nancy Wright, has brought together. The topics of solitary confinement, prison reform, youth detention centres, mental health, and DNA Phenotyping are all of great contemporary importance and being debated constantly. In contrast, Nancy's French interview with Dr. André Normandeau brings many of us back to our beginnings in the study of criminology. After more than 50 years in this field of study, André is still at it and in demand in Canada, the USA and Europe. Merci beaucoup, André for your many years of service to the CCJA and contributions to the *Justice Report* and the *Canadian Journal of Criminology and Criminal Justice*.

Hope to see many of you soon in Quebec City. ■

# ÉDITORIAL

**IRVING KULIK**
Directeur général de l'ACJP

J'espère que, lorsque vous lirez le présent numéro d'*Actualités Justice*, l'été sera à nos portes et que les temps froids et plutôt pénibles connus cet hiver et au printemps seront derrière nous. Même si j'espère que l'été sera des plus agréables, mes pensées se tournent vers l'automne, spécialement vers novembre 2019.

Comme vous le savez sans doute, nous célébrerons notre 100e anniversaire avec nos partenaires de la Société de Criminologie du Québec à l'occasion du congrès 2019 qui se tiendra à Québec du 6 au 9 novembre. Cet événement aura lieu dans l'une des plus belles villes en Amérique du Nord, l'historique ville de Québec, et sera d'une envergure inégalée depuis des dizaines d'années. Étant donné le nombre de demandes de présentation reçues, soit plus de 150, nous avons dû ajouter des espaces de réunion et des plages horaires. En fait, nous allons procéder au lancement du congrès 2019 le mercredi après-midi au lieu du traditionnel jeudi matin, et l'événement se poursuivra jusqu'à samedi midi, voire plus tard. De plus, le nombre de conférenciers de marque atteindra un sommet jamais vu.

Nous allons présenter bon nombre de sommités universitaires, y compris le récipiendaire de l'Ordre du Canada, Tony Doob, le professeur Pierre Noreau, les juges québécois Guy Cournoyer et Pierre Hamel, ainsi que les sénatrices Kim Pate et Patti Laboucane-Benson. Nous allons ouvrir le congrès 2019 avec la juge en chef du Québec, l'honorable Nicole Duval Hesler, et la commissaire du Service correctionnel du Canada, Anne Kelly. L'enquêteur correctionnel, Ivan Zinger, sera présent, de même que la protectrice du citoyen au Québec, Marie Rinfret, l'ombudsman fédérale des victimes d'actes criminels, Heidi Illingworth et la spécialiste en santé mentale, Anne Crocker. Vous ne verrez nulle part ailleurs une liste de participants aussi reconnus.

Lors de notre banquet du vendredi soir, nous aurons l'insigne honneur et privilège d'une allocution du juge en chef de la Cour suprême du Canada, le très honorable Richard Wagner. Voilà une occasion à ne pas manquer ! Pour nous assurer que vous ne plierez pas bagage avant la toute fin, nous avons prévu une présentation de clôture samedi qui sera donnée par l'honorable Serge Joyal, sénateur, dont les connaissances et l'engagement dans les questions d'ordre juridique et constitutionnel remontent à plus de quarante ans.

La période d'inscription au congrès est maintenant commencée, et je vous encourage tous à vous inscrire rapidement, à vous procurer vos billets pour le banquet avant qu'ils ne s'envolent et à réserver vos chambres à l'Hôtel Le Concorde. Vous trouverez de plus amples renseignements et des liens en ligne dans la double page centrale du présent numéro.

Le présent numéro contient plusieurs articles des plus intéressants que notre rédactrice, Nancy Wright, a colligés. Les sujets de l'isolement cellulaire, de la réforme pénitentiaire, des centres de détention pour jeunes, de la santé mentale et de phénotypage de l'ADN revêtent tous une importance contemporaine et font régulièrement l'objet de débats. Par ailleurs, Nancy a réalisé une entrevue en français avec monsieur André Normandeau qui ramène plusieurs d'entre nous aux tous débuts de l'étude de la criminologie. Après plus de 50 ans passés dans ce domaine d'étude, monsieur Normandeau continue d'y travailler et d'être en demande au Canada, aux États-Unis et en Europe. Merci beaucoup André pour vos nombreuses années de service à l'ACJP et pour vos contributions à *Actualités Justice* et à la *Revue canadienne de criminologie et de justice pénale*.

En espérant vous voir en grand nombre sous peu à Québec. ■

# ENTREVUE DE L'ACJP AVEC ANDRÉ NORMANDEAU

**NANCY WRIGHT**
Éditrice de l'*Actualités Justice*

***André Normandeau, merci de consacrer du temps à cette entrevue de l'ACJP… Veuillez commencer en nous parlant de vous, de l'endroit où vous êtes né et où vous avez fréquenté l'école, mais aussi de votre intéressante histoire familiale qui remonte à quelque 300 ans au Canada.***

Je suis né au Québec (Canada), à Montréal en l'occurence, le 4 mai 1942. Marié depuis plus de 50 ans… avec la « même épouse », Pierrette Lapointe, une « petite fille » de Québec (ville) et une infirmière de formation. J'ai 3 fils et 3 belles-filles : Alain (Chantal), Louis (Phuong) et Jean (Katty). Et… 5 grands-petits-enfants : Nicolas, Lorie, Gabriel, Frédérique et Anie-Pier. J'ai aussi un « petit » frère, Denis. Mes ancêtres étaient français. Le premier Normandeau, Jacques de son prénom, était un soldat du Royaume de France, venu au Canada à ce titre en 1690. Il s'installa comme simple citoyen par la suite dans la ville de Québec. Les familles Normandeau sont donc au pays depuis plus de trois siècles. Mes ancêtres les plus récents furent les suivants:

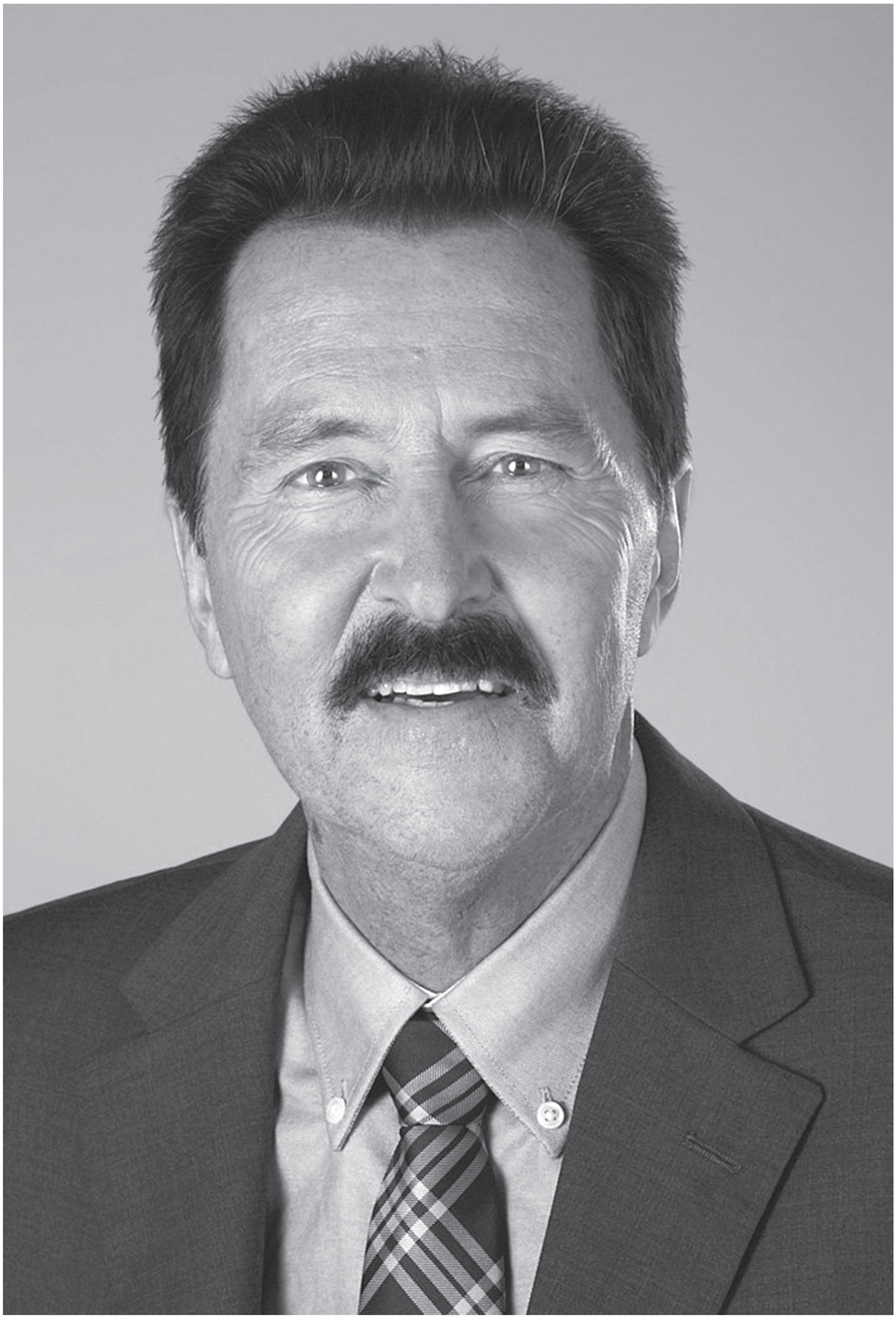
**Mon arrière-grand-père, Bédard Normandeau (1860-1910)**, fut d'abord un soldat canadien, membre des Carabiniers de Mont-Royal, un régiment francophone au sein de l'armée canadienne. Devenu Lieutenant de cette armée, il dirigea son régiment vers l'Ouest canadien au milieu des années '80 pour protéger l'unité du pays lors de la Rébellion des Métis et de Louis Riel. Il co-dirigea la construction de forts militaires à Calgary, Red Deer et Edmonton en Alberta. À l'occasion du centenaire de la Gendarmerie royale du Canada (GRC) en 1974-75, la GRC reconstruisit le Fort de Red Deer selon les plans originaux. Ce fort fait maintenant partie d'un parc national en banlieue de Red Deer, sur le bord de l'autoroute qui mène de Calgary à Edmonton. Le fort porte officiellement le nom de mon grand-père, soit le « Fort Normandeau », depuis ce temps. À son retour au Québec, Bédard Normandeau devint le « chef » de police de L'Assomption et de la région aux alentours, une banlieue aujourd'hui de Montréal. Entre « policier » et « criminologue », n'y a-t-il pas des rapprochements surprenants?

**Mon grand-père, Édouard Normandeau (1884-1924)**, était un avocat spécialisé en droit pénal, soit un criminaliste. À un moment donné, il fut le Bâtonnier du Barreau du Québec à Montréal. Entre « criminaliste » et « criminologue », n'y a-t-il pas des rapprochements surprenants?

**Mon père, Gabriel Normandeau (1912-1978)**, fut un employé et un banquier de la Banque nationale du Canada (BNC) toute sa vie. Il fut même le directeur de la principale succursale de la BNC à Montréal.

**Pour ma part**, je fis mes études pré-universitaires au Collège de L'Assomption de 1954 à 1962, un collège dit « classique » dirigé par des prêtres séculiers de Montréal où les études étaient fort importantes mais les activités sportives également. J'y fus pensionnaire pendant 8 ans, ce qui « forme la jeunesse », n'est-ce pas ?

**Mes passions dans la vie**, outre celles envers mon épouse Pierrette et ma famille, sont les suivantes : le



cinéma comme divertissement; le tennis que je pratique régulièrement ; la criminologie, évidemment...

***Pourriez-vous nous parler de votre parcours : Qu'est-ce qui vous a poussé à consacrer votre vie à la criminologie et à la justice pénale et quelles ont été vos influences principales?***

J'ai décidé dès les années '60 d'entreprendre une carrière en criminologie car l'aspect « relation d'aide » avec les jeunes délinquants et leurs victimes m'attirait particulièrement. Dans cette perspective « d'aider les gens en difficulté », j'avais auparavant, d'ailleurs, envisagé une carrière en médecine (psychiatrie), en service social et même en prêtrise (catholique) à titre de missionnaire. Le lien est évident, il me semble, puisque c'était le désir « d'aider » directement, en contact personnel, telle ou telle personne, tel ou tel groupe de personnes qui sont aux prises avec des problèmes personnels. C'est dans cette perspective que j'obtiendrai en premier un baccalauréat en sociologie à l'Université de Montréal (1962-64). À cette période, je fis partie activement de l'équipe de rédaction d'une revue politique et sociale de centre-gauche, « Cité libre ». La revue était dirigée par Pierre Trudeau, professeur à la Faculté de droit de l'Université de Montréal. Il devint subséquemment ministre de la Justice du Canada (1965-68) et Premier ministre du Canada (1968-83). Par la suite, ayant obtenu une bourse d'étude américaine prestigieuse, la Woodrow Wilson Fellowship, je poursuivis une maîtrise en criminologie et un doctorat en sociologie-criminologie (1964-68) à l'Université de la Pennsylvanie à Philadelphie, une des huit (8) universités historiques américaines dite de la Ivy League. À Philadelphie, les deux professeurs et criminologues de réputation internationale étaient alors Thorsten Sellin (1996-1994) et Marvin Wolfgang (1924-1998). Le Dr. Sellin, d'origine suédoise, parlait couramment sept (7) langues, dont le français. Il était déjà le grand spécialiste des études empiriques sur la peine de mort. Le Dr. Wolfgang, pour sa part, était reconnu pour ses travaux sur les statistiques de la criminalité et sur la violence urbaine. Les deux criminologues avaient déjà été membres de quelques commissions d'enquête importantes sur la justice pénale aux États-Unis et en Grande Bretagne.

***En 1968, vous êtes devenu professeur à l'Université de Montréal ; pouvez-vous nous parler du rôle que vous avez joué dans la transformation du département de criminologie de l'Université de Montréal pour en faire une école de criminologie (professionnelle), des diplômes en criminologie actuellement offerts, mais aussi du Centre international de criminologie comparée (CICC) et du rôle que vous y jouez?***

En 1968, à mon retour de Philadelphie, j'acceptai un poste de professeur au Département de criminologie de l'Université de Montréal. En 1970, mes collègues m'élirent Directeur du Département, un département que je dirigeai pendant dix ans (1970-79). Je remplaçai alors le directeur « charismatique » historique qui avait fondé le Département de criminologie en 1960, le Professeur Denis Szabo. Ce dernier, d'origine hongroise, avait obtenu en 1956 son doctorat en sociologie-criminologie de l'Université de Louvain, située près de Bruxelles en Belgique. Après un séjour de recherche à Paris (CNRS), il immigra au Canada où il fut recruté au Département de sociologie de l'Université de Montréal en 1958. La carrière « hors-norme » et « hors-pair » de Denis Szabo, décédé l'an dernier (1929-2018), a été présentée en français et en anglais à la fois dans le numéro # 5-2018 du magazine *Actualités Justice* ainsi que dans le numéro # 61.1-2019 de la *Revue canadienne de criminologie et de justice pénale* (RCCJP).

Compte tenu de mon intérêt professionnel de jeunesse « d'aider » les délinquants et les victimes, j'entrepris avec mes collègues de transformer le Département de criminologie orienté vers la recherche depuis les années '60 vers une École de criminologie professionnelle orientée vers la « formation pratique » d'un futur professionnel travaillant en contact direct du jeune délinquant, du criminel adulte, des victimes d'actes criminels, ainsi que du personnel des services de sécurité intérieure (sécurité publique/police et sécurité privée) et des services correctionnels : prison provinciale et pénitencier fédéral ; probation sous toutes ses formes, libération conditionnelle sous toutes ses formes… Le curriculum des étudiants depuis les années '70 offre donc la possibilité aux étudiants et futurs professionnels de choisir entre une orientation de « recherche » (environ 10 % des étudiants) et une orientation dite de « criminologie clinique » (90 %), accompagnées de stages pratiques.

L'orientation « recherche » a été redynamisé par la création en 1969-70 du Centre international de criminologie comparée (CICC) de l'Université de Montréal. Ce centre, bilingue, fondé par Denis Szabo,

et que j'ai dirigé dans les années '80, regroupe tous les professeurs de l'École de criminologie impliqués en recherche ainsi qu'une dizaine (10) de chercheurs professionnels et une trentaine (30) d'étudiants de maîtrise et de doctorat en criminologie qui en tirent leurs mémoires de maîtrise et leurs thèses de doctorat. Plusieurs groupes de recherche s'y retrouvent, dont une chaire fort importante et prestigieuse, la Chaire de recherche du Canada en sécurité, identité et technologie. Le CICC célèbre ainsi cette année le 50e anniversaire de sa vie universitaire (1969-2019). Par ailleurs, l'École de criminologie en tant que tel regroupe aujourd'hui 28 professeurs à temps plein et plus de 30 chargés de cours ou de stages. L'École est responsable d'un baccalauréat, d'une maîtrise et d'un doctorat en criminologie, mais également d'un baccalauréat et d'une maîtrise en sécurité intérieure. Une année typique, plus de 1000 étudiants sont inscrits dans l'ensemble des programmes de criminologie offerts. Plusieurs de ces étudiants proviennent d'ailleurs d'une dizaine de pays à chaque année. L'on estime que plus de 5000 futurs criminologues ont reçu depuis 1960 leurs diplômes en criminologie.

***Pourriez-vous nous parler de votre expérience à l'international en tant que professeur et criminologue et nous expliquer comment cette expérience a éclairé votre travail dans l'élaboration d'une criminologie québécoise?***

Mon expérience internationale en criminologie se marie autour de 3 grands axes :

1) À titre de Directeur du Centre international de criminologie comparée (CICC) de l'Université de Montréal pendant quelques années ou de simple membre de l'équipe du CICC pendant plus de 25 ans, j'ai participé activement aux activités de recherche du CICC où la dimension internationale était évidemment au premier plan. À titre d'exemple, une recherche importante sur l'opinion publique en matière de justice pénale, avec des comparaisons entre le Québec, le Canada, la France, la Belgique et la Suisse, fut l'une des plus importantes et intéressantes du CICC. Je fus l'un des directeurs de recherche sur le sujet. La criminologie québécoise a été marquée par cette perspective et elle a été le carrefour de découvertes scientifiques importantes en « criminologie comparée », d'où le nom du CICC.

2) Le CICC organisa dès les années '70 jusqu'aux années 2000 des congrès internationaux prestigieux où participèrent des criminologues d'une trentaine (30) de pays. Une façon de bien faire apprécier, entre autres, le « savoir-faire » en recherche des criminologues québécois.

3) À titre personnel, je mentionne que j'ai été professeur invité à plusieurs reprises pour un cycle d'enseignement mensuel et quelquefois annuel, que ce soit à Toulouse (à 15 reprises), à Aix-Marseille (à 10 reprises), à Paris (à 5 reprises), à Pau (à 3 reprises), ainsi qu'à 2 reprises à Bordeaux et à Poitiers (la région historique de mes ancêtres français). Également ailleurs à l'occasion, tel aux États-Unis, en Belgique, en Suisse, en Italie et en Espagne. Ces expériences internationales m'ont permis de développer à chaque fois à mon retour au pays un enseignement universitaire plus intéressant et plus passionnant pour mes étudiants.

***L'ACJP et la Société de criminologie du Québec (SCQ) coorganiseront cet automne le Congrès 2019 (du 6 au 9 novembre 2019). Pouvez-vous nous en dire davantage sur les origines de la SCQ, sur la manière dont elle a contribué à l'élaboration d'une criminologie québécoise et quelle a été votre contribution au fil des années?***

La Société de criminologie du Québec (SCQ) a été fondée en 1960 par le désormais «célèbre» (ou presque) Denis Szabo, en collaboration avec plusieurs praticiens de la justice pénale au Québec : policiers, juristes, travailleurs sociaux, psychologues… et quelques universitaires. La SCQ a joué un rôle de premier plan pour le développement de services de justice pénale de qualité, grâce à ses interventions auprès des ministères de la Justice et de la Sécurité publique du Québec et du Canada. Par exemple, le Service de probation du Québec a été établi à la suite de recommandations spécifiques de la SCQ dans les années '60. Le Service de libération conditionnelle du Québec le fut également dans les années '70. De plus, lors des débats célèbres sur la peine de mort au Canada dans les années '60 à '80, la SCQ a été au « premier rang » d'un combat démocratique qui a mené à l'abolition de cette peine en 1976. La SCQ a aussi toujours donné son avis sur les projets de loi liés à la justice pénale en présentant des mémoires aux députés et en participant de façon énergique à tous les débats publics associés, y compris par sa présence dynamique à la télévision et à la radio.

Mentionnons que la SCQ collabore de près à l'occasion avec l'ACJP depuis près de 60 ans (1960-2019), comme en témoigne l'organisation « conjointe » cette année du « grand » congrès national à Québec, du 6 au 9 novembre, de l'ACJP

et de la SCQ. Je mentionne en toute modestie, qu'avec Denis Szabo et autres praticiens, j'ai participé activement aux activités de la SCQ, ayant été entre autres au poste de Secrétaire général de la SCQ dès les années '60.

***À quel moment de votre carrière avez-vous pris connaissance de l'existence de l'ACJP et à quoi s'est caractérisé votre implication dans l'Association?***

Mon implication aux activités de l'Association canadienne de justice pénale (ACJP) est intervenue dès les premières années de ma carrière. Quatre implications en particulier :

- Pendant 50 ans, de 1969 à aujourd'hui, j'ai assumé la responsabilité des recensions de livres pour la *Revue canadienne de criminologie et de justice pénale* (RCCJP), la revue scientifique de l'ACJP. Le lecteur retrouvera le détail de cette collaboration dans le numéro # 1-2019 de notre magazine *Actualités Justice* (34.1) sous le titre : « 50 ans à la barre des recensions de la *Revue canadienne de criminologie et de justice pénale*, 1969-2019 ». Un demi-siècle à ce titre, pas mal, n'est-ce pas?
- J'ai fait partie à quelques reprises du Conseil d'administration (CA) de l'ACJP dès les années '70 et '80. J'ai même assumé la Présidence par intérim de l'ACJP au moment où la Présidente en exercice, ma collègue Marie-Andrée Bertrand (U-Montréal), ne pouvait plus en assumer la responsabilité pour des raisons de santé.
- J'ai fait partie du Comité consultatif de l'ACJP auprès du ministère du Solliciteur général du Canada, devenu le ministère de la Sécurité publique du Canada, pendant 4 ans (1975-79).
- À titre de Secrétaire-général de la Société de criminologie du Québec (SCQ), j'ai également organisé au cours des années quelques congrès de la SCQ, en collaboration avec l'ACJP.

***Pourriez-vous nous parler de votre implication dans les enquêtes publiques au cours de votre carrière, la plus récente étant la Commission Charbonneau?***

L'une des missions importantes de la criminologie et des criminologues est celle de proposer, s'il y a lieu, et de participer activement aux travaux des commissions d'enquête sur tel ou tel aspect de la justice pénale. Avec d'autres collègues et quelques praticiens, nous avons ainsi participé aux travaux d'une quinzaine (15) de commissions d'enquête depuis 1960, dont les Commissions Prévost au Québec (1967-69) et Ouimet au Canada (1967-70), auxquelles j'ai personnellement participé lors de mes premières années universitaires.

***Durant les 20 dernières années ou presque, vous avez principalement pris part à des études portant sur les services de police et la sécurité publique. L'une des études fondamentales que vous avez réalisées dans les années 90 était particulièrement importante en raison de sa dimension nationale. Que pouvez-vous nous en dire?***

Au cours de la seconde partie de ma carrière, soit de 1990 à aujourd'hui, les activités des services de police ont soulevé mes intérêts et ont marqué mes travaux. Par exemple, j'avais eu l'opportunité au début des années '90 d'être nommé par le ministre de la Sécurité publique du Canada pour diriger un groupe de travail sur l'avenir de la police au Canada. J'ai alors rencontré plus de 1000 policiers de chaque province et de chaque territoire. Notre rapport : « Une vision de l'avenir de la police au Canada / Police - Défi 2000 » (en collaboration avec Barry Leighton) a été publié à 110 000 exemplaires, en français et en anglais, ce qui est exceptionnel pour ce genre de document, lorsqu'on songe qu'un livre universitaire est habituellement publié en 2000 ou 3000 exemplaires. Toutes les policières et tous les policiers canadiens, sans exception, ont reçu un exemplaire, ainsi que tous les maires du Canada et plusieurs élus politiques impliqués dans les dossiers de la police. Des citoyens et des universitaires intéressés aux affaires de sécurité intérieure ont reçu également une copie. Plus récemment, j'ai siégé au Comité civil d'examen des activités du Service de police de Montréal (SPVM).

***Dans le dernier numéro de l'Actualités Justice (34.1), vous déplorez une pénurie de revues francophones. Qu'est-ce qui est au cœur de cette question et y a-t-il quelque chose à voir avec le financement?***

Il est vrai que dans mon article récent d'*Actualités Justice* (# 34.2-2019), que vous retrouverez dans ce numéro (« Un mot ou deux sur les revues francophones en criminologie, 1948-2018 »), j'ai signalé que d'une certaine façon j'étais déçu que seules 9 revues francophones en criminologie (dont 3 sont bilingues), par rapport à 46 revues anglophones en criminologie, diffusaient les résultats de recherche en criminologie et/ou soumettaient des idées de réforme dans le domaine de la justice pénale. À bien y penser, toutefois, ce regret doit être nuancé. En effet, cette relative pauvreté est explicable :

Le nombre de « locuteurs » francophones est relativement limité par rapport aux « locuteurs » anglophones : 300 millions de francophones et près de 2 milliards d'anglophones. L'enseignement de la criminologie se retrouve au sein d'une centaine d'universités francophones versus plus de « plusieurs » centaines d'universités anglophones.

Je dois reconnaître que plusieurs criminologues francophones préfèrent être publiés dans des revues anglophones à cause du prestige de la langue anglaise en matière scientifique. L'avancement de leur carrière est souvent accéléré par de telles publications.

▷ Les pays les plus riches ont les ressources nécessaires pour appuyer la recherche en criminologie et ces pays sont en particulier anglophones : Les États-Unis, la Grande Bretagne, l'Australie… et le Canada. Évidemment, la situation canadienne, pays officiellement bilingue, est un peu spéciale. Jadis, il y a bien longtemps, j'ai déjà pensé que les subventions des organismes fédéraux au Canada n'octroyaient pas leur juste part aux université francophones, du moins en matière de recherche en criminologie. Par la suite, toutefois, ayant participé à plusieurs activités de ces organismes, je dois faire amende honorable et déclarer qu'une certaine justice existe dans la distribution des subventions aux université francophones en tenant compte de la démographie.

### *En terminant, quels conseils pouvez-vous donner aux futurs criminologues parmi nous?*

Tout compte fait, travailler à titre de criminologue pendant 50 ans (1968-69 à 2018-19) a été un immense plaisir professionnel « et » personnel. Un plaisir qui se continue avec cette entrevue, et qui se continuera je le souhaite pendant encore plusieurs années. Comme toute profession qui se respecte et selon la phrase bien connue de l'écrivain français Nicolas Boileau (1636-1711) : « Cent fois sur le métier remettez votre ouvrage », la profession de criminologue est exigeante et le sera encore plus à l'avenir, autant pour les universitaires que pour les praticiens. Nous travaillons spécifiquement avec des êtres humains « en chair et en os » : étudiants, clients des services de justice pénale, clients criminels ou clients-victimes, et… le personnel des services policiers, judiciaires et correctionnels. Nous ne devons jamais oublier que « le respect des personnes est primordial » à toutes les phases du système de justice pénale. À ma façon, j'ai essayé d'appliquer rigoureusement cette maxime et ce code de vie. Pas toujours facile, mais le mettre en pratique le plus souvent possible est une gratification professionnelle « et » personnelle extraordinaire. Que le Dieu des criminologues (!) nous aide tous à travailler avec « justice et justesse »… et nous serons tous fort heureux, comme moi je le fus, comme je le suis toujours et comme je le serai encore pour un bon moment, du moins je le souhaite.

Je termine avec une citation « célèbre » que j'ai probablement trop rappelée par le passé, mais qui résume ma philosophie, celle du poète français, Paul Verlaine (1844-1896) : « Et tout le reste n'est que littérature ».

Vive la criminologie québécoise et canadienne !
Vive les criminologues québécois et canadiens ! ■


ABSTRACT

**CCJA Interview with André Normandeau**

**NANCY WRIGHT**
*Justice Report* Editor

This interview with Québec criminologist, Université de Montréal professor, and devoted family man, André Normandeau, relates how he turned an early passion for helping troubled youth and their victims into a fulfilling career in criminology. Normandeau's family has a history in law enforcement; his grandfather was a criminal lawyer and his great grandfather was a chief of police in Québec. After obtaining a BA in criminology at Université de Montréal, Normandeau pursued an ivy-league education in the US. Upon his return to Québec, he became a professor at Université de Montréal and subsequently replaced the renowned Denis Szabo (Canada's first criminologist and founder of the first criminology department in Canada, at Université de Montréal) as director of the department, in which capacity he changed the orientation of the Criminology Department to include a major focus on practical training. Normandeau's vast international experience has involved the directorship of Université de Montréal's International Centre for Comparative Criminology (ICCC) and participation in many of its international congresses, and he has also been visiting professor at a vast number of universities in Europe and the US. He has long been involved with the Société de criminologie du Québec (SCQ) and his association with CCJA dates back to the early years of his career. He has served as the book review editor (French books) of CCJA's *Canadian Journal of Criminology and Criminal Justice* (CJCCJ) for the past 50 years; has served on CCJA's board and its advisory committee and helped SCQ organize a number of congresses with CCJA. Normandeau also shares his involvement in public inquiries, elaborates on an article (in this issue of *Justice Report*) on French and English criminology journals before offering some closing statements on "justice" and "being just" for future criminologists.


**INTERVIEW WITH JOHN WINTERDYK**
COMING UP IN THE NEXT ISSUE
**ENTREVUE AVEC JOHN WINTERDYK**
À VENIR DANS LE PROCHAIN NUMÉRO

Comparative & Global Criminologist
Professor, Mount Royal University, Calgary (AB)
Adjunct Professor: University of Regina, Regina, Sask.
Adjunct Professor: St. Thomas University, Fredericton, NB.
Visiting Professorship KIIT University, Bhubaneswar, India.

# SNC – Lavalin, the State and Remediation Agreements (RAs)

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**The author's opinions do not necessarily reflect those of the organizations for which he works.*

***Given the recent media attention regarding the engineering firm SNC-Lavalin and the Canadian federal government, I consider it relevant and appropriate to zero in on the starting point of this media attention: "deferred prosecution agreements", or "remediation agreements". This policy-review article outlines a few of the criticisms and rationales behind this procedural tool and briefly describes the way it is structured within Canadian criminal law.***

## REMEDIATION AGREEMENTS (RAS): DEFINITION, RATIONALE AND CRITICISMS

What are RA's? Essentially, "[RAs] are […] contracts between the government and a corporate criminal in which the government agrees not to prosecute a corporation in return for a list of concessions"[1]. The firm in question does not plead guilty to a criminal offense; rather, it agrees to pay heavy fines and comply to specific tailor-made conditions in exchange for a suspension of criminal proceedings. If the State is satisfied with the firm's compliance, the charges are dropped and deemed to have never been commenced[2].

At first, these types of behind-closed-doors negotiations between the State and companies suspected of corporate misconduct seem to give cause for concern. RAs have indeed been criticized by many authors for various reasons, including for the implication that the criminal justice system can be bought by the rich and powerful, furthering the impression that the severity of a criminal sanction varies depending on an accused's resources[3]. Similarly, some argue that the popularisation of RAs constitutes a clear victory for firms that have been trying for decades to weaken or eliminate corporate criminal liability regimes[4].

Despite these criticisms and other issues raised[5], there are arguments favoring the use of RAs. Criminal law Professor Amissi Manirabona[6] explains how, on the one hand, prosecutors have much trouble detecting corporate misconduct and gathering sufficient evidence given the complexity of white-collar crime[7]. On the other hand, firms fear self-reporting corporate misconduct if they have no guarantees about how that information will be used by the prosecutor[8]. RAs hence generate collaboration between the prosecutors and the firm in question, which will thus be much more willing to cooperate in the detection and prosecution of crime within its organization. Prof. Manirabona argues that such cooperation is crucial since firms themselves understand much more than police do about their inner workings and are thus far better able to detect and prevent misconduct[9]. Without external self-reporting mechanisms, the State can barely access the evidence required to prosecute and deter corporate crime, which means alternative measures are required. Manirabona also adds that corporate crime can effectively and preventively be deterred by RAs, since its tools can be used to impose compliance conditions and ways to make sure they are fulfilled. Heavy penalties accompany these negotiated agreements, which

simultaneously ensure that the corporation is duly sanctioned, and victims compensated[10].

Professor Jennifer Arlen[11] similarly argues that "legislation that both creates an appropriately structured corporate liability regime and provides for negotiated settlements is an essential part of [deterring corporate crime]"[12]. On the one hand, most enforcement agencies have limited resources as regards corporate crime, "requiring that all cases got to trial thus can reduce the deterrent effect of corporate criminal sanctions by reducing the probability that firms are sanctioned"[13]. On the other hand, she argues that "negotiated settlements are likely the most effective way to implement the type of multi-tiered corporate liability regime that is needed in order to effectively deter misconduct by publicly held firms and other firms whose owners are not directly involved in management"[14]. Indeed, corporate crime can be much more effectively deterred by "inducing firms to effective steps to monitor and detect misconduct, investigate suspicious activities, self-report any violations detected, and fully cooperate with authorities to bring wrongdoers to justice"[15]. Yet, that is only possible if firms that do self-report and cooperate have confidence that they will be less severely sanctioned than if they do not.

## REMEDIATION AGREEMENTS (RAs) IN CANADIAN CRIMINAL LAW

These types of negotiations were popularized in the US in the early 2000s[16] where they are known as deferred prosecution agreements. Canada very recently incorporated its own legal framework for RAs into the *Criminal Code*[17]. Without positioning ourselves regarding the appropriateness of implementing this procedure within our system, here's a brief overview of how it is structured.

Purpose: The *Criminal Code* outlines different purposes for RAs. For instance, they aim to hold the organization accountable for its wrongdoing through penalties, encourage voluntary disclosure of wrongdoing and contribute to respect for the law through the implementation of corrective measures while holding responsible those individuals who effectively engaged in the wrongdoing[18].

Conditions: The prosecution can only engage in RA negotiations if the misconduct did not involve, for instance, bodily harm or benefit organized crime. RAs must also be in the public interest[19].

Inadmissibility of admissions: The adopted legal framework for RAs specifically provides that no admission, confession or statement accepting responsibility for a given act made by the organization can be used against it in any civil or criminal procedure other than those relating to RA negotiations[20].

Compliance measures: RAs can include compliance measures to address any deficiencies in the organization's corporate misconduct policies, with the nomination of an independent monitor of the organization's compliance[21].

Court approval and termination orders: Any RA between the prosecution and the organization must be approved by the Court[22]. It must also terminate the RA if it is satisfied that the organization has breached a term of the agreement[23], following which the prosecutor can recommence the proceedings without new information[24]. However, if the conditions are respected, the Court must declare that the terms of the RA were met, and the proceedings against the organization are deemed to have never commenced[25].

Publication: The RA must in principle be published by the Court[26].

## CLOSING REMARKS

This article has presented a very brief summary of the basic principles of Remediation Agreements - RAs. I recommend an attentive reading of the relevant section of the *Criminal Code* to anyone seeking a more in-depth understanding of what has brought the SNC-Lavalin saga to the forefront of Canadian media. ■

### NOTES

1. Wilson Meeks. (2006-2007). Corporate and White-Collar Crime Enforcement: Should Regulation and Rehabilitation Spell an End to Corporate Criminal Liability? Columbia Journal of Law and Social Problems 40: 77, 80, cited by Amissi M. Manirabona. (2016). « Avons-nous besoin des *deferred prosecution agreements* au Canada?» Revue Juridique Thémis 50(3) : 651, 657.
2. However, the charges against the direct perpetrators of the economic (white-collar) crimes are not dropped. Quite the contrary, one of the objectives of the RAs is to encourage companies to cooperate in the prosecution of those individuals.
3. David M. Uhlmann. (2013). Deferred Prosecution and Non-prosecution Agreements and the Erosion of Corporate Criminal Liability Maryland Law Review 72: 1295, 1341; David M. Uhlmann. (2016). The Pendulum Swings: Reconsidering Corporate Criminal Prosecution. (UC Davis L. Review 49 (4): 1235, 1242.

4. Mokhiber, Russell. (2015). Speech Delivered at the National Press Club: Crime without Conviction: The Rise of Deferred and Non Prosecution Agreements. Corporate Crime Reporter., cited in Manirabona (above): 657.

5. In particular, the authors questioned the deterrent effect of RAs (Manirabona (above): 670), criticized the lack of transparency of the negotiations between the prosecutor and the firm in question, in addition to the prosecutor's excessive discretion (Connor Bildfell. (2016). Justice Deferred? Why and How Canada Should Embrace Deferred Prosecution Agreements in Corporate Criminal Cases. Canadian Criminal Law Review 20: 161, 190.), and expressed concern over the State's power in regard to the admissions that are made by the firm in question during RA negotiations (Manirabona (above): 670).

6. Université de Montréal (Law Faculty).

7. Manirabona (above): 663.

8. *Id*.

9. *Id*.

10. *Id*., citing Court E. Golumbic et Albert D. Lichy. (2014). The "Too Big to Jail" Effect and the Impact on the Justice Department's Corporate Charging Policy. Hastings Law Journal 65: 1293, 1315. RAs could consequently serve several of the different principles of sentencing codified at s. 718, *Crim. C*. (See Bildfell (above)).

11. Professor (New York University School of Law) and Director (*Program on Corporate Compliance and Enforcement*).

12. Arlen, Jennifer. (2017). Corporate Criminal Enforcement in the United States: Using Negotiated Settlements to Turn Potential Corporate Criminals into Corporate Cops NYU School of Law, Public Law Research Paper 17-12: 1.

13. *Id*.

14. *Id*.

15. *Id*.

16. Arlen (above): 5.

17. Came into force September 19th, 2019, through Bill C-74.

18. *Crim. C.*, art. 715.31, respectively b), d), c) et f).

19. *Crim. C.*, art. 715.32 (1) c). Section 715.32 (2) lists non-exhaustively different factors that should be considered to evaluate public interest. Interestingly, s. 715.32 (2) bans the prosecutor from considering other specific factors, such as national economic interest.

20. *Crim. C.*,art. 715.34 (2).

21. *Crim. C.*,art. 715.34 (3)

22. *Crim. C.*,art. 715.37. Paragraph (6) specifies different factors that must be considered by the Court, such as public interest.

23. *Crim. C.*, s. 715.39 (1).

24. *Crim. C.*, s. 715.39(2)

25. *Crim. C.*, s. 715.4.

26. *Crim. C.*, s. 715.42.


# JUSTICE

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# SNC – Lavalin, l'État canadien et les accords de réparation (ARs)

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**Les opinions de l'auteur ne représentent pas nécessairement celles des organisations auxquelles il est affilié.*

***Il y a récemment eu toute une tempête médiatique relativement à la firme SNC-Lavalin et le gouvernement fédéral canadien. Dans ce contexte, nous estimons pertinent et opportun de brosser un court portrait du point de départ de cette tempête, soit ce qu'on appelle les « accords de réparations » (ARs) ou « accords de poursuites différées ». Après avoir repris certaines des critiques et raisons d'être de cet outil procédural, nous survolerons brièvement la structure qui a été privilégiée dans le cadre de son implémentation en droit canadien.***

## DÉFINITION, CRITIQUES ET RAISONS D'ÊTRE

Avant tout, qu'est-ce qu'un AR ? De façon très succincte, ces accords sont « des contrats négociés entre les autorités de poursuite et des entreprises soupçonnées d'avoir commis des crimes économiques en vertu desquels les poursuites sont suspendues contre une liste de conditions à observer »[1]. Il ne s'agit pas de plaidoyers de culpabilité ; plutôt, les entreprises en question s'engagent à respecter certaines conditions et payer certaines pénalités financières en échange d'une suspension des poursuites criminelles. Ce n'est que si lesdites conditions sont respectées que les accusations portées sont réputées n'avoir jamais été engagées[2].

L'existence d'une telle procédure semble *a priori* inquiétante. Les ARs ont en effet été critiqués par plusieurs auteurs pour différents motifs, dont celui selon lequel la justice pénale serait « achetable » par les entreprises soupçonnées, renforçant ainsi l'impression que sa sévérité varie selon l'ampleur des ressources dont dispose l'accusé(e)[3]. Plus encore, « la prolifération des [ARs] représenterait une victoire des grandes entreprises qui, pendant des décennies, auraient cherché à affaiblir ou éliminer le régime de responsabilité pénale qui leur est applicable »[4].

Malgré cette critique et plusieurs autres[5], il y a d'autres raisons qui viennent plutôt justifier la mise en place d'un tel outil procédural. En effet, pour Professeur Amissi Manirabona[6], il faut reconnaître qu'alors que d'un côté « les entreprises ont peur de livrer aux poursuivants les indices de leur culpabilité sans s'assurer du contrôle de l'utilisation subséquente de ces informations », de l'autre, « les procureurs ont de la difficulté à recueillir de la preuve suffisante compte tenu de la complexité de la criminalité économique »[7]. De tels accords permettent donc une collaboration entre les poursuivants et l'entreprise soupçonnée et poussent cette dernière à collaborer dans la détection et l'enquête de la criminalité économique au sein de son organisation. Cette coopération est critique puisque ce sont les entreprises elles-mêmes « qui connaissent, mieux que la police, leur organisation et fonctionnement internes et, donc, sont bien placées pour détecter et prévenir les crimes en leur sein »[8]. En effet, « il devient presque impossible pour les enquêteurs d'accéder aux éléments de preuve nécessaires aux poursuites en l'absence de mécanismes de dénonciation externe de la criminalité[9]. Il serait donc nécessaire « d'élargir les mesures de rechange pour mieux s'attaquer à la criminalité économique »[10]. Parallèlement, les

ARs outillent l'État en lui permettant d'imposer des conditions et assurer le suivi du respect des dites conditions aux fins de *prévenir* les crimes économiques[11], tout en exigeant des réparations monétaires importantes à des fins de dissuasion et de réparations aux victimes [12].

La professeure Jennifer Arlen[13] a également tenu des propos selon lesquels l'implémentation de tels outils procéduraux est nécessaire à la lutte contre la criminalité économique. D'un côté, considérant les ressources limitées des autorités relativement à la poursuite d'infractions criminelles de nature économique, exiger que tous les dossiers soient traités par la voie traditionnelle du procès (ou du plaidoyer de culpabilité) réduit la probabilité qu'une firme soit sanctionnée, réduisant ainsi l'effet dissuasif que devrait avoir la crainte d'une condamnation criminelle. De l'autre côté, la professeure reconnaît candidement que l'utilisation de telles ententes est le seul moyen d'obtenir un régime de sanction pour effectivement être en mesure de lutter contre la criminalité économique lorsque les propriétaires ne sont pas directement impliqués dans la gestion. Ce n'est qu'avec la coopération de firmes qui enquêtent sur le comportement illicite au sein de leur organisation, qui s'autodénoncent et qui coopèrent avec les autorités dans les poursuites des auteurs directs des comportements illégaux que la criminalité économique peut être effectivement réduite[14]. Or, pour inciter les firmes à agir ainsi, celles qui s'autodénoncent et qui coopèrent avec les autorités doivent nécessairement être – et avoir *confiance* qu'elles seront - moins sanctionnées que celles qui ne le font pas.

## LES ARs EN DROIT CANADIEN

C'est aux États-Unis au début des années 2000s que l'utilisation des ARs par les entités poursuivantes s'est popularisée[15]. Sans nous prononcer sur l'opportunité de la mise en place d'une telle procédure, l'État canadien a récemment décidé de l'intégrer au sein de son *Code criminel*[16]. Nous estimons opportun d'étudier certains principes de cette nouveauté en droit canadien.

Objectifs : Le *C.cr.* prévoit plusieurs objectifs à de tels accords. Notamment, les ARs ont pour objet de tenir l'organisation responsable par l'imposition de pénalités, de favoriser la divulgation volontaire d'actes répréhensible, et de favoriser le respect de la loi en mettant en places des mesures correctives, tout en tenant responsables les personnes qui se sont livrées aux actes en question[17].

Conditions préalables : Le *C.cr.* prévoit également diverses conditions obligatoires devant être présentes avant qu'un procureur n'entame la négociation d'un AR. Par exemple, en sus d'exclure cette possibilité si les actes à l'origine des accusations ont causé des lésions corporelles ou ont été commis au profit d'une organisation criminelle[18], de telles négociations doivent être dans l'intérêt public[19].

Non-admissibilité des aveux : Une particularité significative du régime veut que les aveux de culpabilités ou déclarations par lesquels l'organisation se reconnaît responsable ne sont pas admissibles dans toutes autres procédures civiles ou pénales que celles reliées à l'AR en question20.

Mesures correctives : Le *C.cr.* prévoit que l'AR peut inclure des mesures correctives afin de corriger les lacunes dans les politiques de l'entreprise relative à la criminalité économique, accompagnées de la nomination d'un surveillant indépendant afin de vérifier si l'entreprise s'y conforme[21].

Entérinement judiciaire et pouvoir de résiliation : Le *C.cr.* prévoit qu'un AR doit être entériné par le tribunal[22]. Ce dernier ordonne la résiliation de l'AR s'il est convaincu que l'organisation a fait défaut de respecter les conditions de l'accord[23]. Le cas échéant, les poursuites envers l'entreprise peuvent être reprises sans nouvelle dénonciation[24]. Toutefois, si les conditions ont été respectées, le tribunal rend une telle ordonnance et les poursuites envers l'entreprise sont réputées n'avoir jamais été engagées[25].

Publication : En principe, le tribunal est tenu de publier l'AR[26].

## CONCLUSION

Voilà donc un très bref portrait de la structure des ARs en droit canadien. Je recommande une lecture plus attentive de la section pertinente dans le *C.cr.* à toutes celles et tous ceux qui souhaitent mieux saisir le point de départ de la saga SNC-Lavalin qui a récemment secoué les médias canadiens. ■

**NOTES**

1. Wilson Meeks. (2006-2007). Corporate and White-Collar Crime Enforcement: Should Regulation and Rehabilitation Spell an End to Corporate Criminal Liability? Columbia Journal of Law and Social Problems 40 : 77, 80, cité par Amissi M. Manirabona. (2016). « Avons-nous besoin des *deferred prosecution agreements* au Canada ? Revue Juridique Thémis 50 (3) : 651, 657.
2. Toutefois, les poursuites contre les auteurs directs des crimes économiques en question ne sont pas suspendues. Bien au contraire, un des objectifs des ARs est justement d'obtenir la coopération de l'entreprise dans la poursuite de ces individus.
3. David M. Uhlmann. (2013). Deferred Prosecution and Non-prosecution Agreements and the Erosion of Corporate Criminal Liability Maryland Law Review 72 : 1295, 1341 ; David M. Uhlmann. 2016). The Pendulum Swings: Reconsidering Corporate Criminal Prosecution. (UC Davis L. Review 49 (4) : 1235, 1242.
4. Mokhiber, Russell. (2015). Speech Delivered at the National Press Club : Crime without Conviction : The Rise of Deferred and Non Prosecution Agreements. Corporate Crime Reporter, cité en Amissi M. Manirabona. (2016) (préc). Revue Juridique Thémis 50 (3) : 651, 657.
5. Les auteurs ont notamment mis en doute l'effet dissuasif des ARs (Manirabona, préc., p. 670), ont critiqué l'opacité des négociations entre la poursuite et l'entreprise soupçonnée (Connor Bildfell. (2016). Justice Deferred? Why and How Canada Should Embrace Deferred Prosecution Agreements in Corporate Criminal Cases. Canadian Criminal Law Review 20 : 161, 190), ont plaint une discrétion et un pouvoir excessivement larges des procureur(e)s de la poursuite (*Id*.) et se sont inquiétés quant aux pouvoirs de la poursuite relativement aux admissions faites par l'entreprise dans le cadre des négociations (Manirabona, préc., p. 670).
6. Université de Montréal (Faculté de droit).
7. Manirabona, préc., p. 663.
8. *Id*.
9. Manirabona, préc., p. 677.
10. Manirabona, préc. p. 672.
11. Manirabona, préc., p. 663, citant Court E. Golumbic et Albert D. Lichy. (2014). The "Too Big to Jail" Effect and the Impact on the Justice Department's Corporate Charging Policy. Hastings Law Review 65 : 1293, 1315.
12. *Id*. Ainsi, les ARs permettraient d'atteindre plusieurs des objectifs pénologiques prévus à l'article 718 *C. cr.* (voir Bildfell, préc.).
13. Professeure (New York University School of Law) et Directrice (*Program on Corporate Compliance and Enforcement*).
14. Jennifer Arlen. (2017). Corporate Criminal Enforcement in the United States : Using Negotiated Settlements to Turn Potential Corporate Criminals into Corporate Cops. NYU School of Law, Public Law Research Paper 17-12 : 1.
15. Arlen, préc., p. 5.
16. *C.cr.*, art. 715.3-715.43. Cette section est entrée en vigueur le 19 septembre 2018 par le biais du projet de loi C-74.
17. *C.cr.*, art. 715.31, respectivement par. b), d), c) et f).
18. *C.cr.*, art. 715.32 (1) b).
19. *C.cr.*, art. 715.32 (1) c). Les facteurs à considérer pour évaluer l'intérêt public sont énumérés non exhaustivement à l'art. 715.32 (2). Le paragraphe 715.32 (3) quant à lui différents facteurs ne pouvant pas être considérés à ces fins dans certains contextes, tel que l'intérêt économique national.
20. *C.cr.*, art. 715.34 (2).
21. *C.cr.*, art. 715.34 (3)
22. C.cr., art. 715.37. Le paragraphe (7) énumère différents facteurs devant être pris par le tribunal, dont l'intérêt public.
23. *C.cr.*, art. 715.39 (1).
24. *C.cr.*, art. 715 (2).
25. *C.cr.*, art. 715 (4).
26. *C.cr.*, art. 715.42.


# JUSTICE

**ACTUALITÉS - REPORT**

APPEL DES ARTICLES

**THÈMES ET DATES DE TOMBÉE 2020**

**35.1**
**SUJETS GÉNÉRAUX**
► 30 octobre 2019

**35.2**
**SANTÉ MENTALE ET LA SJP DU CANADA**
► 28 février 2020

**Contactez Nancy Wright**
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BOOK REVIEW

# A first step towards "What to do about prison care systems, child welfare care systems and juvenile care systems?"

**JON FRIEL**
R.Psych. Alberta

*It is impossible to learn that which one thinks one already knows.*
Epictetus (55 – 135 AD)

If you've read anything about the voices and needs of the vulnerable young citizens with whom we work or about the facilities housing at-risk youth and those already in conflict with the criminal justice system — such as the 2017 Ontario Child Advocate report, Ivan Zinger's 2018 Correctional Investigator Report, or any negative media reports— you may have asked the same question that has nagged me since 1970 when I formally started out in these fields: ***What do we do?***

Some people have taken a first step in knowing 'what to do and how to do it'. The California Evidence Based Clearing House for Child Welfare. (CEBE)'s mission says it all: "To advance the effective implementation of evidence based practices for children and families within the child welfare system". The CEBC provides information on (and oversight of) research evidence and specific programs; guidance on how to make critical decisions regarding selecting and implementing programs; and tools and materials to support choosing, implementing and sustaining a program. CEBC's program oversight and funding is provided by the California Department of Social Services; Children and Family Services Division and the Office of Child Abuse Prevention. The CEBC is guided by three main entities: (Advisory Committee, Scientific Panel, Implementation Panel) exclusively comprised of US researchers, mainly non-academic.

## MARTHA HOLDEN'S CHILDREN AND RESIDENTIAL EXPERIENCES (CARE), CREATING CONDITIONS FOR CHANGE

One of the programs currently being followed by CEBC is a multi-level program model, Child and Residential Experiences (CARE), developed in the US by Martha Holden, MSW. It is also the focus of her book, *Children and Residential Experiences: Creating Conditions for Change* (Holden, 2009). Holden's research and development of CARE, which delivers on the well-recognized need for improved models received by children in out-of-home care in association with Cornell University's Residential Child Care Project (RCCP), an entity that aims to "translate… current research into programs designed to improve the quality of care for children living in group care settings".

I like Holden's *Children and Residential Experiences: Creating Conditions for Change*, but feel it is not comprehensive enough to constitute a best-practice model. I think it needs to be reworked and updated to include the work of more researchers, such as Canada's James P. Anglin, PhD [*Pain, Normality and the Struggle for Congruence: Reinterpreting Residential Care for Children and Youth*] (2014)

or the US's Hilary N. Weaver, DSW [*Trauma and Resilience in the Lives of Contemporary Native Americans* (2019)], among others.

Holden's book has many good chapters. For example, Chapter 14 speaks to the need for the therapeutic alliance; Chapter 17 expands the need to understand the child's environs; Chapter 18 speaks to issues of children growing up in government sponsored care; Chapter 19 speaks to the need for structure and routine in people's lives and Chapter 20 describes our need for personal space and autonomy. I agree with many of the book's concepts, which remind me of Alfred Adler and Individual Psychology. In my opinion, however, Holden has not given enough scope to the many research/practice areas of other disciplines that are important in the provision of residential care. She goes the other way, quoting Treischmen et al (1969, p.vi) in support of the idea of "therapeutic milieu", "*a general theory of how child growth and development can be supported and nourished by adults who care about and for children. Helping children in residential care does not need to be special treatment for disturbed children to be phased into their lives by highly trained and dedicated adults*" (page 14). What would be the need of the book if that were true?

Children who have emotional and neurological issues, concerns, and problems do need specially trained people - and there is an additional special need for those who also present mental disorders. For youth in residential centers and those serving in the criminal justice sector, this programming must continue in the community following discharge, when the human experience may well be girded by poverty, stigma, and low education levels that work against self-actualization in youth (Siegel, 2012).

The Index in Holden's book clearly illustrates the degree to which she has ignored the role of medicine, neurology, psychiatry, and psychology in the care and treatment of residential children. Also, the book uses percentages to fathom "factors that influence change in children" (Chapter 12, page 93), but it is unclear how data was gathered and analyzed or whether the subjects have mental health and neurological issues.

In my opinion, Holden's embrace of Maslow (Chapter 5, page 39) goes too far; the Maslow pyramid is too limited for the complex world of child residential care. While Maslow's positive psychology is certainly a goal for most folks, children with emotional-behavorial-neurological and sometimes mental disorders need programming by specially trained adults in order to move from the safe-and-secure step to a phase in which they learn how to belong.

It seems increasingly obvious that we can no longer discount the immediate future of the disciplines of genetics/ cell biology/neurology and the nuances these will create for therapy and treatment plans and goals. It thus follows that something needs to be said about this in a best-practice book. For example, research into the potential use of Visualization/EMDR for children in care who suffer from post- traumatic disorders. I feel there needs to be some accompanying understanding of epigenetic effects and how shifts in neurons and/or glial cells might be induced to reduce the effects of trauma (Doidge, 2015, *The Brain That Changes Itself; Gazzanga, 2018, The Conscious Instinct*).

I would also like to have seen some illustrations in Martha Holden's book, such as to show the potential impact of exercise on the brain, which would facilitate a basic understanding of how the science of neuroplasty has begun to identify ways that the brain can rewire itself. Ample research into this rewiring capability, whether for positive or negative thoughts, emotions or behaviors, includes, among others, Norman Doidge's *The Brain that Changes Itself* (2007) and *The Brain's Way of Healing* (2015). A Mayo clinic study (Ahlskog et al., 2011) found aerobic exercise provides the stimulus for hippocampal enlargement (creation of new neurons that can improve brain function); the 30-year Cardiff study (Peter Elwood, 2013) measured the impact of various stimuli on dementia and supports, etc.

## CONCLUDING THOUGHTS

In 2006, the US responded to the crisis in child welfare care by creating the California Evidence-Based Clearing House for Child Welfare. In the coming years, CEBC data from studies currently underway and future ones will help inform policy makers, consumers, and agency directors. One of CEBC's programs, Martha Holden's CARE model, seems to have taken Maslow's call for a shift in focus away from brain illness or disorders to human experience too far.

Some of the children in residential or group care do have overarching individual therapeutic needs that can best be met by way of treatment plans having daily and weekly goals and implemented using a team approach between staff/child and specially trained adults in such disciplines as medicine, psychiatry, psychology and neurology.

Finally, with over half a century experience in Alberta/Saskatchewan human services behind me, I feel qualified and impelled to ask more questions: *Why does the CEBC (US best-practices clearing house for research into residential and group care models) include no Canadian researchers, and are our researchers and national organizations overly reliant on USA human services information?*

In my opinion, these questions, and many more, could best be answered by taking a concerted look at the benefits of establishing a best-practices clearing house in Canada. After all, one can talk about the many negatives of child care, juvenile and adult institutions, judicial sentences or other social institutions, but at the end of the day one needs to summon the courage and wherewithal to think creatively and do things differently (Warrell, 2018). ■


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RÉSUMÉ

**A first step towards "What to do about prison care systems, child welfare care systems and juvenile care systems?"**

**JON FRIEL**
R.Psych. Alberta

Jon Friel traite d'une question qui le travaille depuis qu'il a commencé sa carrière en Alberta il y a plus de 50 ans: Comment régir? Désignant la réponse des États-Unis à la crise continue en matière de protection de l'enfance (c.-à-d. le California *Evidence-Based Clearing House for Child Welfare* [CEBC]) comme un pas dans la bonne direction, Friel s'interroge sur la faible participation du Canada et réitère certaines préoccupations relatives à l'un des programmes suivis actuellement par le CEBC, le modèle CARE de Martha Holden. Dans cette perspective, Friel présente une analyse critique du livre de Martha Holden paru en 2009, *Children and Residential Experiences: Creating Conditions for Change*, dans lequel elle expose en détail son modèle et conclut en appelant à la mise sur pied d'un bureau central fondé sur des données probantes au Canada.

ARTICLE

# Biological Witness: DNA Phenotyping

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***Non-coding DNA has been used for forensic purposes for over 30 years. The profiles contained in most world DNA data banks are non-coding profiles, meaning the DNA segments are varied between individuals. Phenotyping, a new spin on DNA technology relies on some of the coding segments of DNA that contain information about our physical features. Phenotyping, based on the DNA information selected, can produce a composite sketch of what features an individual might have. This article focuses on what phenotyping can and cannot do. The theme echoed herein is that phenotyping in forensic casework should be used with caution.***

Biology is accepted as both a component and partial explanation of criminal behavior, but we are far from unravelling the inheritance-environment equation: *how much* of one's genetic makeup versus one's environment (G x E) contributes to one's behaviour (i.e., MAOA genotyping; see Holmgren and Winterdyk, 2011). Regardless, advances in genomic technologies are creating a world of knowledge that could never have been predicted from early DNA and the Human Genome Project, which would allow science to examine and sequence 3.2 billion chemical (DNA) base pairs and some estimated 30,000 genes[1] (Human Genome Project, 2018).

DNA research has been propelling advances in the biological pharmaceutical market at an explosive rate. "Rather than start with a disease and search for its origin, biotech medication begins with the detection of a genetic variation and relies on therapies that manipulate it" (Morrow, 2004). The recognition that not all identical genes are expressed in the same way (e.g., will produce a disease in all people who have that gene), however, has led to individualized treatments employing biologic medications derived from other living systems such as micro organisms, plants or animal cells. Recombinant DNA (rDNA) technology is usually part of the process of producing biologics. Through genetic recombination, such as molecular cloning, DNA from a person's cells is modified to cause a different expression,in the aim, for example, of preventing a heritable disease. A biologic drug canthus change the nature of the DNA and the particular gene makeup of that organism (Griffiths, Miller, Suzuki, Lewontin, & Gelbart, 2000).

While the pharmaceutical market is focused on the invention of newer biologics, forensics is also looking to DNA for answers, but not in the traditional sense. The newest technology utilized by US and Canadian law enforcement, DNA-phenotyping, is powered by specialized bioinformatics. Phenotyping is a predictive process by which a likeness (a sketched 'photograph') can be generated from DNA found at a crime scene, and its use is cautioned. The objective of this article is to provide the reader with a general overview of

> *The probability that two individuals will consistently have identical markers exceeds one out of a billion. In other words, if DNA-genotyping evidence is presented for identification purposes in a courtroom, the statistical probability that the crime sample came from someone other than the suggested match would be at most one in a billion (Roewer, 2013).*

forensic DNA technologies with a special focus on DNA-phenotyping and what this new tool for law enforcement can and cannot do.

## OVERVIEW OF DNA-PROFILING FOR IDENTIFICATION PURPOSES IN A CRIMINAL CASE

DNA technology for the purposes of criminal investigations was initially rooted in the fact that every individual's DNA is unique. The possibility of identifying one's DNA was first made possible by a technique called Restriction Fragment Length Polymorphisms (RFLP). This technique was used to search for certain unique parts of a person's DNA and was originally developed by the UK's Sir Alec Jeffreys in 1985, along with the then UK Forensic Science Service (FSS); it is acknowledged as one of the world's major contributions to the discipline of forensic genetics (Budowle et al., 2011). Jeffreys's RFLP was the first DNA-profiling technique to be used in a criminal case (in 1987). It was used to successfully prosecute one man and exonerate another who had been falsely accused (Cobain, 2016).

A drawback of early RFLP analysis for forensic purposes was the need for large samples—it could not be performed on the microscopic shreds of biological evidence often found during criminal investigations. This problem was solved with the introduction of Polymerase Chain Reaction (PCR) technology, by which millions of copies of specific segments of DNA could be produced for analysis. PCR is also known as 'amplification' and can be used on the tiniest shreds of biological matter. The US biochemist Kary Mullis won the Nobel Prize in Chemistry in 1993 for his development of PCR, which is also referred to as "molecular photocopying" (NHGRI Research).

RFLP-DNA profiling (aka fingerprinting) has generally been replaced by a new analysis technique called short tandem repeat (STR) profiling since the early 1990s. The ability to make multiple copies of the minute sections of genes where STRs are located remains the most important contribution of PCR amplification technology, which allows us to read the sequence of millions of pieces of DNA from a small sample (Butler, 2015). While human DNA is relatively the same from one individual to the next, it varies in the segments that are considered hyper variable, or non-coding. The non-coding segments, where STRs are located, is thus suitable for identification purposes in criminal cases. STRs are currently "the recognized standard in constructing national public database" (Gill, 2002).

## DNA-PROFILING DATABASES

The first DNA profiling database involved the use of short tandem repeat (STR) markers and was launched in 1995 by the UK Forensic Science Service (FSS) (Werrett, 1997). In the early days of DNA profiling / fingerprinting, only four specific positions (i.e., four core STR loci) of genes in a chromosome were analyzed. Only three years later, in 1998, the US launched its National DNA Index System (NDIS), which would allow the examination of 13 STR places (core loci). Today, DNA profiles include the examination at 15 places, and more have been proposed (see Hares, 2012). The greater the number of places (core loci) tested, the stronger the identification potential. The probability that two individuals will have identical markers at all tested STR locations within their DNA exceeds one out of a billion. A sample profile is compared to a DNA-profiling (genotyping) database to gain any associated investigative leads.

The purpose of Canada's 1998 *DNA Identification Act* was to establish a DNA data bank (i.e., a database of individual profiles) for criminal identification purposes that includes a Crime Scene Index (CSI) and a Convicted Offender Index (COI). The National DNA Data Bank was officially launched in 2000, relying on the Combined DNA Index System (CODIS) provided by the FBI and the United States' National Defense (CODIS, 2018), which is the system used worldwide. Today in Canada, the National DNA Data Bank contains 365,565 COI profiles and 143,963 CSI profiles (RCMP, 2018). CODIS automatically searches the CSI and COI indices for matching profiles. Forensic profiles are housed with the National DNA Data Bank in Canada. In 2004, the US's NDIS database had around two million profiles, by 2014, this database had grown to 14 million profiles. The US alone processes around 1.5 million samples yearly among of its public, state and private laboratories (Butler, 2015).

The idea of database systems can be very misleading, however, because the amount of profiles therein depends on what profiles are selected for entry. Ancestry services, which claim

to be able to identify one's ancestry correctly, can really only make claims related to their reference populations. Their data bases are very selective and tend to rely on very small samples (e.g., 100-400 samples). Ancestry services do not use databases that carry some millions of profiles. To date, China, the United States and the UK have the largest DNA data banks in the world. But some countries, like Germany and the Netherlands, have less than one per cent of their population in their data banks (Roewer, 2013).

## WHAT IS DNA-PHENOTYPING?

The conventional DNA profiles found in the DNA-profiling criminal justice database, such as CODIS for example, only include the STR-DNA profiling data required for identity-matching. A related technology – DNA-phenotyping – focuses on those genes that are considered to be coding. Coding genes are those that can produce information about physical traits. DNA-phenotyping is the "reconstructing of physical features from genetic data" (Smithsonian, 2018). Thus, while STR-DNA profiling (discussed above) is considered the most discriminatory technique for human identity testing, the use of another type of data - single nucleotide polymorphisms (SNPs) in a technique called DNA-phenotyping - has something quite different to offer. SNPs are the locations targeted with PCR technology for use in measuring DNA variations to identify lineage markers, ancestry informative markers (i.e. geographic location of one's ancestors), and one's phenotypic traits (Butler et al., 2007). The Human Genome Project identified about 15 million common SNPs that occur naturally in the human population, and most of them are SNP variants. Canadian and most forensic DNA data banks around the world consists of STR profiles. SNP technology focuses on completely different biomarkers than does STR technology, which means that CODIS systems cannot be utilized for phenotyping. The SNPs used for phenotyping are heritable traits. Ancestry, face shape, hair color, eye color and freckles are highly heritable, whereas weight, height, shade of color, beard and length of hair are more determined by one's environment.

There are two distinct types of DNA phenotyping. In indirect phenotyping, external characteristics can be deduced on the basis of an individual's geographical origin, and in some cases an individual's surname. Once a geographical origin has been determined, characteristics influenced by environment can be predicted. Direct phenotyping focuses on the characteristics that are linked solely to an individual's DNA (Koops & Schellenkens, 2008). Forensic DNA phenotyping combines both indirect and direct phenotyping and is used to create a likeness (a type of facial composite sketch) of an individual. Forensic DNA phenotyping cannot, currently, determine age.

## DNA-PHENOTYPING IN FORENSIC CASEWORK IS TO BE USED WITH CAUTION

Police departments in Canada and the United States have turned to phenotyping as a supplemental investigative tool to solve crimes. On December 24, 2017, a newborn was found deceased in a dumpster in Calgary. Genetic evidence located at a nearby motel suggested that the mother might there have given birth to the child (Derworiz, 2018). Had the mother's profile been part of a DNA data bank, she would have been identified; however, without a genotype-to-genotype comparison, the standard DNA tests provided no leads and the case might have become cold. However, with new phenotyping technology, a US company was able to provide a DNA phenotype (a prediction) of what the mother looked like based on the genetic material left at the suspected crime scene. A composite sketch was also made of the baby. DNA-phenotyping has also recently been used in a cold case in Washington (US) to produce a composite sketch for police of a suspect alleged to have killed a young couple from British Columbia (Canada) more than 30 years prior. Forensic evidence found at the crime scene had been run through DNA profiling databases in both Canada and the United States but had not produced a forensic hit. Drawn from the alleged suspect's DNA, a phenotype composite image was created picturing a male at three different ages: 25, 45 and 65 (Karstens-Smith, 2018). To date, the case has not been solved, but with the composite of what the suspect might look like, it is hoped that the case will be resolved in the near future.

## SPECIALIZED BIOINFORMATICS PIPELINE FOR SNP-DNA

DNA-phenotyping services, such as Snapshot (by Parabon NanoLabs of Reston, Virginia), aim to predict the physical appearance of individuals from a DNA sample. In 2018, Parabon launched a genetic genealogy service for law enforcement in the US (see parabon-nanolabs.com). Rather than using a

traditional DNA data base such as those used by most law enforcement agencies, however, Snapshot uses a specialized bioinformatics pipeline, which is a datamining algorithmic machine that compares the SNP findings with those in more than 10,000 donor profiles to produce a trait prediction (Van Laan, 2016). The predictions are used to produce a report and composite sketch, which details ancestry, eye color, skin color, hair color and face morphology (Parabon Snapshot DNA Phenotyping, 2018). It should be noted that the *Canadian Identification Act* prohibits the use of the DNA data bank for anything other than what was originally proposed in 1998 (storage of STR DNA samples). As a result, Canada's DNA data banks cannot compare SNP profiles used in phenotyping.

## CONCLUDING REMARKS

The advantages of having a photo-like composite sketch of an alleged perpetrator or a missing person are invaluable to law enforcement investigations; however, such composite sketches should be viewed with a healthy degree of skepticism. The composite sketch is meant as a reference point only and is not a photograph of any particular individual. Thus, the use of forensic DNA-phenotyping technology such as Snapshot should only be used in forensic casework that has failed to find an STR-DNA hit in a CODIS-run system and in instances where awareness about an individual's geographical origin or potential physical features could accelerate or help direct an investigation. Phenotyping might also become one the newest technologies used in elimination of suspects and in wrongful convictions where ancestry could set free the innocent.

In DNA-Phenotyping, the coloration of skin, hair and eyes, as well as the shape of face or other facial morphology are only predictions and do not consider variations in hues or environmentally altered appearance. The current technology relies on predictability likelihoods and should not be viewed as certain. Forensic phenotyping is an additional DNA tool available to law enforcement but should be used only as one tool among many in an investigation. ■

**NOTE**

1. The human genome is said to have been completely sequenced within the limits of today's technology.

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RÉSUMÉ

**Biological Witness: DNA Phenotyping**

**JANNE A. HOLMGREN**
Professeur - Mount Royal University, Calgary (AB)

L'ADN non codant est utilisé à des fins judiciaires depuis plus de 30 ans. Les profils contenus dans la plupart des banques de données génétiques du monde sont des profils non codants, ce qui signifie que les segments d'ADN varient d'une personne à l'autre. Le phénotypage, une nouvelle avenue dans la technologie de l'ADN, s'appuie sur certains segments d'ADN codants qui contiennent des renseignements sur nos traits morphologiques. Le phénotypage, fondé sur les données d'ADN sélectionnées, permet de produire un portrait-robot illustrant l'apparence possible d'une personne. Cet article met en lumière les possibilités et les limites du phénotypage. Le thème récurrent de l'article soutient que le recours à cette technologie dans les enquêtes judiciaires se doit d'être fait avec prudence.

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# OVERVIEW OF PRESENTERS AND SPEAKERS
# APERÇU DES CONFERENCIERS ET ORATEURS

## WEDNESDAY / MERCREDI, NOVEMBER 6 NOVEMBRE
### OPENING CEREMONY / OUVERTURE DU CONGRÈS

**Marion Vacheret**
President / Présidente, Société de criminologie du Québec (SCQ)

**Mihael Cole, President**
President, Canadian Criminal Justice Association (CCJA)
Association canadiene de justice pénale (ACJP)

**Anne Kelly**
Commissioner of the Correctional Service of Canada (CSC)
Commissaire du Service correctionnel du Canada (SCC)

## THURDAY / JEUDI, NOVEMBER 7 NOVEMBRE
### RETROSPECTIVE HISTORY OF CRIMINAL JUSTICE
### RÉTROSPECTIVE HISTORIQUE SUR LA JUSTICE PÉNALE

Honorable Judge
L'honorable juge
**Guy Cournoyer**

Honorable Judge
L'honorable juge
**Pierre Hamel**

### EVOLUTION OF CANADIAN PENAL POLICIES

Professor
Professeur
**Dr. Anthony Doob**

### ROUND TABLE: THREE MAJOR CONTEMPORARY ISSUES IN CRIMINAL JUSTICE:
### Indigenous | Mental health | Victimology

**Mr. Ivan Zinger**
Correctional Investigator of Canada
L'enquêteur correctionnel du Canada

Senator
Sénatrice
**Patti Laboucanne-Benson**

**Dr. Anne Crocker**
Professor in physiatry and addictions at McGill University and Director of the National Forensic Psychiatry Institute of Philippe Pinel
Professeure titulaire au département de psychiatrie et d'addictologie, Université McGill et directrice de la recherche et de l'enseignement universitaire à l'Institut national de psychiatrie légale Philippe-Pinel

**Heidi Illingworth**
Federal Ombudsman for Victims of Crime
L'ombudsman fédérale des victimes d'actes criminels

## FRIDAY / VENDREDI, NOVEMBER 8 NOVEMBRE
### HUMAN RIGHTS / DROITS HUMAINS

Senator
Sénatrice
**Kim Pate**

**Marie Rinfret**
Ombudsman
Protectrice du citoyen

Right Honourable
**Richard Wagner**, C.P., Chief Justice of Canada
Juge en chef du Canada

## SATURDAY / SAMEDI, NOVEMBER 9 NOVEMBRE
### CLOSING PRESENTATION AND CLOSING REMARKS
### PRÉSENTATION ET REMARQUES DE CLÔTURE

**Pierre Noreau**
Professor, Public Law Research Center at Université de Montreal
Professeur au Centre de recherche en droit public de Université de Montreal

Senator / Sénateur
**Serge Joyal**
Lawyer and legal expert by training, Senator Joyal's areas of interest and specialization include legal and constitutional issues, as well as parliamentary law.
Avocat et juriste de formation, il s'est spécialisé dans les domaines des affaires juridiques, constitutionnelles et du droit parlementaire.

# REGISTRATION FEES
# TARIFS D'INSCRIPTION

| CATEGORIES OF FEES<br>CATÉGORIES DE TARIFICATION | BEFORE<br>AVANT<br>SEPT.1 | AFTER<br>APRÈS<br>SEPT.1 |
|---|---|---|
| **Members of the SCQ or CCJA**<br>Membres de la SCQ ou de l'ACJP | $475 | $525 |
| **Non members**<br>Non membres | $535 | $585 |
| **Full time students (with proof) & retirees**<br>Étudiants temps plein (avec attestation à l'appui) & retraités | $150 | $200 |
| **Rates per day**<br>Tarifs à la journée | $225 | $250 |
| **Ticket for the Friday night banquet**<br>Billet pour le banquet du vendredi soir | $75 | $75 |

Registration fees include access to the activities of the congress, a free cocktail on November 6, lunches on November 7 and 8, and health breaks. To register, visit societecrimino.qc.ca or ccja-acjp.ca.

Les frais d'inscription comprennent l'accès aux activités scientifiques du congrès, un cocktail gratuit le 6 novembre, les dîners du 7 et du 8 novembre, ainsi que les pauses santé. Pour s'inscrire, visitez le societecrimino.qc.ca ou le ccja-acjp.ca.

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A $100 administrative fee will be applied to any cancellation prior to September 30. No refunds will be provided for any cancellation after that date. You may contact us should you wish to transfer registration to another person.

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ARTICLE

# Prison, the New Asylum: Canada's Response to Mental Health Problems Among Convicted Persons

BRANDI CHRISMAS

***In this report on the rates of mental health and substance abuse problems affecting inmates in Canada, Brandi Chrismas posits jails and prisons as the new asylums. The author roots this situation in the Deinstitutionalization Movement of the 1960s when scads of people were discharged from mental hospitals and new laws made civil commitment almost impossible, which has made prison the only option for police. Chrismas extols such measures as Manitoba's Mental Health Courts and the Winnipeg Drug Treatment Court as showing a lot of promise, but she calls for increased education and awareness across the board, because mental health and substance abuse problems among inmate populations defeat rehabilitation programs and can push offenders into a downward spiral.***

There are astonishing numbers of individuals with mental health disorders or illness in Canada's jails and prisons. The relationship between mental illness and crime is a controversial topic, and a growing problem in Canada's criminal justice system. According to Statistics Canada, "approximately one in five contacts with police involved someone with a mental or substance use disorder" (Boyce, J., Rotenberg, C., and Karam, M., 2012). Leading sociologist Rick Linden (2012) estimates that 5 to 12 percent of these are severe disorders.

The *Mental Health Act* in the Manitoba Laws (2018) defines mental disorder as a…

> ...substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognize reality or ability to meet the ordinary demands of life but does not include a disorder due exclusively to a mental disability as defined in *The Vulnerable Persons Living with a Mental Disability Act* (2018).

Some researchers include drug and alcohol abuse in this definition as they also can alter one's thinking, mood, perception, etc.; this is why police officers often say that if alcohol and street drugs were removed from society, most of their work would be done (Chrismas, 2013). These kinds of substance abuse are clearly aggravating factors for many if not most people involved in crime, and especially for those with co-occurring mental health issues.

## CAUSAL RELATIONSHIP BETWEEN CRIME AND MENTAL ILLNESS

Linden (2012) describes a causal relationship between crime and mental illness: "just as fever is a symptom of physical disease, so crime is a symptom of mental disorder" (p.308). He explains that little research into mental illness has been carried out among Canada's prison populations. Linden also explains that the "prevalence of mental disorder in Canadian jails is

high", just as in the United States (p.309, 2012). Fazel and Danesh (2002) studied prison populations in 12 western countries and found varying degrees of mental illness among criminals. They varied from serious disorders - such as psychotic illnesses, major depression and antisocial personality disorder - to less serious conditions. The authors explain that "prisoners were several times more likely to have psychosis and major depression, and about ten times more likely to have antisocial personality disorder, than the general population" (Fazel & Danesh, 2002).

## FACTORS RELATED TO MENTAL HEALTH ISSUES IN PRISONS

According to Beynon and Drew (n.d.) mental disorders in prisons are related to several factors: "the wide spread misconception that all people with mental disorders are a danger to the public; the general intolerance of many societies to difficult or disturbing behavior; the failure to promote treatment, care and rehabilitation, and above all, the lack of - or poor access to - mental health services in many countries". If individuals enter prison with an already existing mental disorder, it may likely be exacerbated by the stress of imprisonment.

Linden has further illustrated that criminals can "develop mental health problems during, and perhaps as a result of, their stay in prison." (2012, p.311). This may be linked to the daily living conditions to which prisoners are subjected, such as given by the size and population of the facility, access to jobs and training, length of sentences, various forms of violence, enforced solitude or lack of privacy, lack of meaningful activity, isolation from social networks, insecurity about future prospects, inadequate health services and other things that are beyond the control of the prisoner (Beynon and Drew, n.d.). Beynon and Drew (n.d.) also describe the increased risk of suicide in prisons as often being related to depression.

## POLICE OFFICERS FREQUENTLY INTERACT WITH MENTALLY ILL OFFENDERS

Frontline police officers have cause to interact with mentally ill individuals on a frequent basis; as Chrismas (2012) explains, "research has revealed that the police have had to encounter and protect people with mental health issues more frequently in recent years" (p.209). Chrismas (2012) goes on to explain that, "in 2012, the number of people with mental health challenges being charged with criminal offences was so high in Canada that it caused some to call for a Royal Commission to examine the issue" (p.209). Often when mentally ill people come into contact with frontline police, the officers are faced with a split-second decision on how to deal with them. According to Chrismas (2012), police have to be careful to not try "to become psychiatrists and make on-the-spot diagnoses and assessments of culpability" (p.209). Police are meant to enforce the laws; Crown attorneys are to order psychiatric assessments where needed.

## THE STRUCTURAL ROOTS OF THE PRISON- ASYLUM DICHOTOMY

Canada's "Deinstitutionalization movement" in the 1960's resulted in the discharge of countless patients from mental hospitals, and "the civil commitment laws were also changed so that commitment had to be based on findings of mental illness and dangerousness", which means if someone is dangerous to others and the source of that danger is medical such as a mental illness (Linden, 2012, p.312). Police had to arrest or civilly commit those with a mental illness as opposed to committing them to health centers. If a person with a mental illness claims to have committed a crime, a police officer has no other choice but to arrest them. After all, the police "are in the business of conflict, interfering with people's victimization of each other for the good of the community" (R. Chrismas, 2012, p.65). This is beneficial for individuals with a mental illness because they may already be familiar with and confident in the prison system and the way they will be treated—but especially because treatment might be more accessible to the individual within prison than in the community. A prison might not be an individual's 'dream' place to be treated for mental illness, but services that are more readily available are more effective and for obvious reasons. It would be beneficial for prisons to provide additional training and use approaches that also engage mental health experts and the police (ibid.).

## MENTAL HEALTH AND SUBSTANCE ABUSE PROBLEMS CONTINUE IN PRISON

Studies have shown that high percentages of prisoners have alcohol abuse or dependence, and drug-use disorders. Many convicted criminals have co-occurring disorders, meaning that they have mental health issues exacerbated by drug or alcohol dependency (Linden, 2012). Ultimately these issues often lead to high health and service costs for the criminal justice system. This is why alternatives were created within the criminal justice system, to treat

individuals with mental illness appropriately and effectively. Jails and prisons are holding so many mentally ill people they are actually considered "the new mental institution", "new psychiatric emergency room", or "new asylum" (Linden, 2012, p.309). However, diversion programs and mental health courts are more appropriate alternatives.

## DIVERSION PROGRAMS AND MENTAL HEALTH COURTS IN MANITOBA

In Manitoba, a Mental Health Court (MHC) was established as a weekly sitting of the Provincial Court of Manitoba (Manitoba Courts, 2014). This court offers pre-sentence services and supports for individuals who may have committed a crime as a direct result of a mental illness. The eligibility criteria for this program includes individuals who have been diagnosed with a Severe and Persistent Mental Illness (SPMI) such as schizophrenia or bipolar mood disorder and specific criminal offences (Winnipeg Regional Health Authority, n.d.). According to the Winnipeg Regional Health Authority (n.d.), programs like the mental health courts in Canada have resulted in many successes such as reduced recidivism, shorter stays in jail and hospitals, reduced homelessness, better recovery from substance disorders and increased social functioning. All of these aspects contribute to a better quality of life.

## DRUG TREATMENT COURTS

According to the Correctional Service of Canada an astonishing number of individuals with drug addictions somehow continue to feed their illegal habit while in jail or prison (Rankin, 2013). According to Weekes, Thomas and Graves (2004), "[p]risons house the highest per-capita proportion of persons with substance abuse problems in society" (2004). Another alternative program offered in Winnipeg includes the "Winnipeg Drug Treatment Court (WDTC)" (Manitoba Courts, 2016):

> The Winnipeg Drug Treatment Court program is available to offenders charged under the *Controlled Drugs and Substance Act* (CDSA) with drug-related offences. To be eligible, the offender must be shown to be dependent on drugs, and their criminal behavior must have included an assessment as having either a harmful level or dependent level of drug involvement during the criminal offence in question.

According to Canada's Department of Justice (2016) the Drug Treatment Court Funding Program is meant to "break the cycle of drug use and criminal recidivism" and includes an objective of promoting alternatives to incarceration. These alternatives include a non-custodial sentence upon completion of treatment (ibid.). The accused must voluntarily apply for the program and are screened by the Crown; but, it's ultimately the judge's decision. (Canada Department of Justice, 2016). Participants of WDTC are provided with legal advice and required to enter a guilty plea and agree to a delay in sentencing. Participants go through treatment in the program for approximately one year and are supported with safe housing, stable employment and/or education (ibid.). Participants who complete the program must abstain from drugs, comply with conditions of the program, and show improvement in life skills (Manitoba Courts, 2016).

## CANADA HAS PROBLEMS WITH ILLEGAL AND LEGAL DRUGS INSIDE ITS JAILS AND PRISONS

Drugs that are accessed legally within prisons are also an issue in Canada. According to Hennessy, a reporter for VICE news (2013), methadone is being used a "Band-Aid solution" for opioid addictions. Reportedly, 20 percent of inmates are now hooked on methadone within prisons compared to 1 percent a decade ago (ibid.). Due to the lack of health care staff and medical oversight, methadone dosages are often not properly monitored and can therefore be abused by the inmates, which results in serious addictions. Hennessy (2013) reports "anyone can get on methadone" within the prison system, as there are no real standards. This type of addiction in intertwined with mental health issues and can obviously negatively impact an individual's overall wellbeing, and chronic use can cause serious mental health disorders.

## NEEDLE SHARING INSIDE PRISON AND HIV

In a 2017 study conducted in Toronto, 30 former inmates disclosed that illegal drugs had been readily available in Canadian federal prisons, but it was incredibly difficult to obtain sterile and safe equipment to inject with (Van der Meulen, 2017). The inmates describe drastic ways of finding clean needles, such as stealing from diabetic prisoners or health care staff and creating homemade needles out of whatever they could find (Maclean, 2017). Needle sharing is one of the greatest health risks that inmates face and it can result in high rates of HIV and HCV in Canadian federal prisons, says Van der Meulen

(2017). There are a few harm reduction interventions available in Canadian federal prisons; if available, they could include education or information regarding diseases and disinfection of used needles (Zakaria, 2007). Van der Meulen (2017) explains that there is a general lack of support for harm reduction programs within the Canadian prison service and this can be alleviated by introducing prison needle and syringe programs (PNSPs).

## CONCLUSION

What can prison systems do to alleviate these problems? According to Beynon and Drew (n.d.),

> Effective treatment is possible but too often the available resources are wasted: There are many effective treatments for mental disorders, but often the limited available resources are wasted in ineffective, expensive interventions and services that only reach a small proportion of those in need.

Individuals with mental health issues or addictions should be diverted into the mental health system rather than the criminal justice system. Follow-up treatment is also pertinent, as someone who is hooked on drugs inside prison will continue their substance abuse outside of prison. "Research… suggests that for most offenders with substance abuse problems, the optimal treatment plan involves prison-based treatment, complimentary community-based follow up treatment, and ongoing maintenance, support and after-care services." (Weekes, Thomas and Graves, 2004).

Prisoners who develop mental health problems or addictions while in prison should be provided with the appropriate mental health treatment and care. Individuals who are afflicted by mental illness and severe disorders have many avenues to choose from at the level of the Manitoba Court system. These alternative options are beneficial as they can improve quality of life for individuals and reduce recidivism.

Frontline officers and criminal justice staff require appropriate training, as they frequently interact with inmates who are affected by mental illness and substance abuse problems. Increased education and awareness among the public and within the criminal justice system is clearly needed.

Hennessy (2013) perhaps summed it up best when he said the Canadian "prison system should be working to rehabilitate and free people, not push them further into a downward spiral". People must be redirected into the health system whenever appropriate, even if it means diverting justice dollars into the health system as an investment in Canadians, and hence in Canada's future as a just society. ■

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Rankin, B. (2013). *Let's Talk*. Correctional Service Canada. Retrieved from: individuals with drug addictions somehow continue to feed their illegal habit while in jail

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RÉSUMÉ

**Prison, the New Asylum: Canada's Response to Mental Health Problems Among Convicted Persons**

**BRANDI CHRISMAS**

Dans ce rapport sur le taux de problèmes de toxicomanie et de santé mentale chez les détenus au Canada, Brandi Chrismas énonce que les prisons et pénitenciers seraient devenus les nouveaux asiles. L'auteure enracine cette situation dans le mouvement de désinstitutionnalisation des années 1960, alors que de nombreuses personnes ont été sorties des établissements psychiatriques et de nouvelles lois ont rendu l'internement civil presque impossible, de telle sorte que la prison est devenue la seule option pour les services policiers. Chrismas s'émet que des mesures telles que le Tribunal de la santé mentale du Manitoba et le Tribunal de traitement de la toxicomanie de Winnipeg se révèlent prometteuses, mais préconise l'amélioration de l'éducation et de la sensibilisation en général, étant donné que la toxicomanie et les problèmes de santé mentale au sein des populations de détenus l'emportent sur les programmes de réhabilitation et peuvent entraîner les délinquants dans une spirale descendante.

ARTICLE

# Un mot ou deux sur les revues francophones en criminologie (1948-2018)

**ANDRÉ NORMANDEAU**
Criminologue et professeur, Université de Montréal

***Cet article identifie de façon historique les neuf (9) revues francophones et bilingues en criminologie créées depuis près de 75 ans, dont la Revue canadienne de criminologie et de justice pénale / Canadian Journal of Criminology and Criminal Justice (1958-2018). À titre de comparaison, la liste des 46 revues anglophones en criminologie est proposée. L'auteur mentionne en 2e partie de l'article qu'un juriste et criminologue français de l'Université d'Aix-Marseille a été "assassiné" en Égypte par un terroriste il y a 25 ans. Comme quoi la profession de juriste et criminologue n'est peut-être pas de tout repos.***

En Amérique du Nord (États-Unis et Canada), nous définissons habituellement la criminologie de la façon suivante :

> La criminologie est une discipline universitaire qui étudie le phénomène criminel. Il s'agit d'une étude de nature empirique et théorique. Cette discipline vise notamment à trouver des solutions pour prévenir la criminalité et elle essaie d'améliorer la qualité du travail de la police, des tribunaux pénaux, des prisons et des solutions de rechange à l'emprisonnement, autant auprès des adultes criminels que des jeunes délinquants et, fort important depuis la dernière décennie, auprès des victimes d'actes criminels. Cette étude est interdisciplinaire, sous l'éclairage principal du droit pénal, de la sociologie et de la psychologie en relation avec le crime, la criminalité, le criminel, la victime et, de façon spécifique, dans le contexte de la justice pénale. À l'occasion, avec l'éclairage également de d'autres disciplines, telles la science politique, l'anthropologie, le service social, la biologie et la médecine (psychiatrie), ainsi que l'administration publique. De plus, depuis le milieu du XXe siècle, la criminologie en Amérique du Nord est devenue une véritable profession. Un diplôme en criminologie débouche sur le marché du travail. Les secteurs dans lesquels travaillent les criminologues sont étonnamment diversifiés et nombreux : probation et travail communautaire, sursis et mise à l'épreuve, surveillance électronique, prison, maison de transition et libération conditionnelle, centres de protection de la jeunesse, centres d'accueil et de réadaptation pour les jeunes délinquants ('prison pour les mineurs'), centres d'aide pour les toxicomanes, centre d'aide pour les femmes et les enfants violentés ainsi que pour l'ensemble des victimes d'actes criminels, services de police, prévention de la criminalité, ministères de la Justice, de la Sécurité publique, de la Santé et des Services sociaux. Dans tous ces milieux, les criminologues déploient une activité professionnelle aux facettes multiples : l'intervention clinique, la gestion de programmes, l'animation, la consultation, la recherche, l'enseignement… (adaptation,

avec modifications mineures, d'un article d'André Normandeau, 2018, p. 17-18).

Dans la perspective de cette définition, les revues francophones en criminologie, même si elles sont beaucoup moins nombreuses que les revues anglophones sur le sujet, sont néanmoins fort importantes pour le développement de la criminologie dans les pays francophones ou partiellement francophones, tels : la France, la Belgique, la Suisse, le Canada et… quelques pays africains. En fait, nous dénotons à ce chapitre 9 revues francophones (dont 3 sont bilingues) par rapport à 46 revues anglophones. Nous célébrons d'ailleurs en 2018 une année « faste » car, coïncidence vraiment spéciale, voilà que 4 de ces 9 revues sont « en fête » pour ainsi dire, soit :

## REVUES FRANCOPHONES (DONT 3 SONT BILINGUES)

**1 - Le 70e anniversaire de la Revue internationale de criminologie et de police technique et scientifique (RICPTS, 1948-2018)**. Cette revue est publiée à Genève (Suisse). Elle est l'organe officiel de l'Association internationale des criminologues de langue française (AICLF).

**2 - Le 60e anniversaire de la Revue canadienne de criminologie et de justice pénale / Canadian Journal of Criminology and Criminal Justice (RCCJP-CJCCJ, 1958-2018)**, une revue bilingue à la mode canadienne. Cette revue est publiée par Les Presses de l'Université de Toronto (Canada). Elle est l'organe officiel de l'Association canadienne de justice pénale / Canadian Criminal Justice Association (ACJP-CCJA, Ottawa) qui publie également depuis 1984 un Bulletin trimestriel pertinent : Actualités Justice / Justice Report.

**3 - Le 50e anniversaire de la revue Criminologie (1968-2018)**. Cette revue est publiée par Les Presses de l'Université de Montréal (PUM-Québec). Elle est sous la responsabilité de l'École de criminologie et du Centre international de criminologie comparée (CICC) de l'Université de Montréal.

**4 - Le 40e anniversaire de la revue Déviance et Société (1978-2018)**. Cette revue est publiée à Chêne-Bourg (Suisse), par Médecine & Hygiène, avec le concours du Centre National de la Recherche Scientifique (CNRS-France) et sous la responsabilité commune du Centre d'étude sur le droit et les institutions pénales (CESDIP-Paris), affilié au ministère français de la Justice, et d'un comité international représentant la France, la Belgique, la Suisse et le Canada.

Les cinq (5) autres revues pertinentes, sans être en fête, sont :

**5 - La revue Cahiers de la sécurité et de la justice, publiée à Paris depuis 1969** par l'Institut national des hautes études de la sécurité et de la justice (INHESJ), affilié au ministère français de l'Intérieur. Éditeur : La Documentation française.

**6 - La revue Problèmes actuels de science criminelle, publiée depuis 1985** par Laboratoire de droit pénal et de science criminelle (LGDJ Lextenso, précédemment Presses universitaires d'Aix-Marseille – PUAM), Collection : Institut de sciences pénales et de criminologie (ISPEC) ; Sous-collection : Centre de recherche en matière pénale (CRMP).

**7 - La revue Crime, histoire et sociétés / Crime, History and Societies, publiée depuis 1997** par des universitaires européens et nord-américains, sous l'égide de l'Association internationale pour l'histoire du crime et de la justice pénale / International Association for the History of Crime and Criminal Justice.

**8 - La revue électronique Champ pénal / Penal Field, publiée depuis 2004** par des universitaires européens et nord-américains. Seulement sur internet.

**9 - La Revue française de criminologie et de droit pénal, publiée à Paris depuis 2013** par l'Institut pour la Justice.

## QUATRE (4) AUTRES REVUES FRANCOPHONES PUBLIENT ÉGALEMENT « QUELQUEFOIS » DES ARTICLES DE NATURE CRIMINOLOGIQUE

Nous pourrions ajouter que quatre (4) autres revues francophones publient également « quelquefois » des articles de nature criminologique, même si en fait la très grande majorité des articles sont des articles de droit pénal, ce qui est évidemment fort légitime pour des revues de droit, à savoir :

**a) La Revue pénitentiaire et de droit pénal, publiée à Paris depuis 1877** (oui, 1877, vous avez bien lu). Elle est l'organe de la Société générale des prisons et de législation criminelle. Éditeur : Cujas.

**b) La Revue de droit pénal et de criminologie, publiée à Bruxelles depuis 1907**. Elle est l'organe de l'Union belge et luxembourgeoise de droit pénal.

**c) La Revue de science criminelle et de droit pénal comparé, publiée à Paris depuis 1920**, sous les auspices du Centre français de droit comparé et de l'Institut de criminologie de l'Université Panthéon-Assas (Paris 2). Éditeur : Dalloz.

**d) La revue Thémis, publiée à Montréal depuis 1951**, sous l'égide de la Faculté de droit de l'Université de Montréal. Éditeur : Les Presses de l'Université de Montréal.

## REVUES ANGLOPHONES

Par ailleurs, le lecteur serait peut-être intéressé à la liste des 46 revues anglophones en criminologie comme point de comparaison (Nadeau, Mongeon et Larivière, 2018), soit :

**A - Revues de criminologie ayant un lien privilégié avec les sciences sociales, en particulier avec la « sociologie »** (N = 32, par lettre alphabétique) : Australian and New Zealand Journal of Criminology ; British Journal of Criminology ; Criminology ; Criminology and Criminal Justice ; Criminology and Public Policy ; Crime and Delinquency ; Crime and Justice ; Crime, Law and Social Change ; Critical Criminology ; Deviant Behavior ; European Journal of Criminal Policy and Research ; European Journal of Criminology ; Federal Probation ; Feminist Criminology ; Homicides Studies ; Journal of Contemporary Criminal Justice ; Journal of Criminal Justice ; Journal of Experimental Criminology ; Journal of Quantitative Criminology ; Journal of Research in Crime and Delinquency ; Justice Quarterly ; Juvenile, Family and Court Journal ; Police Quarterly ; Policing ; Policing and Society ; Punishment and Society ; Security Journal ; Social Justice ; Theoretical Criminology ; The Prison Journal ; Victimology ; Youth, Violence and Juvenile Justice.

**B - Revues de criminologie ayant un lien privilégié avec la** « **psychologie** » (N = 10, par lettre alphabétique) : Criminal Justice and Behavior ; International Journal of Offender Therapy and Comparative Criminology ; Journal of Forensic Psychiatry and Psychology ; Journal of Investigative Psychology and Offender Profiling ; Journal of Social Aggression ; Legal and Criminological Psychology ; Psychology, Psychology of Violence ; Violence and Victims ; Youth and Society.

**C - Revues de droit ayant un lien privilégié avec la** « **criminologie** » (N= 4) : Crime and Law ; Feminist Legal Studies ; Journal of Criminal Law and Criminology ; Social and Legal Studies.

Ceci dit, le lecteur trouvera 'ailleurs' dans notre revue (Revue canadienne de criminologie et justice pénale - RCCJP) deux recensions spéciales: a) celle du 40e anniversaire de la revue Déviance et Société, une recension par Bastien Quirion de l'Université d'Ottawa ; b) celle du 50e anniversaire de la revue Criminologie, une recension par Philippe Robert du Centre d'études sur le droit et les institutions pénales (CESDIP) du ministère français de la Justice. La liste des recensions apparaît dans une section de la Revue (RCCJP) alors que les recensions elles-mêmes apparaissent au complet sur le site web de l'Association (ACJP).

## QUELQUES PRÉCISIONS SUR LA REVUE PROBLÈMES ACTUELS DE SCIENCE CRIMINELLE PUBLIÉE DEPUIS 1985 PAR L'INSTITUT DE SCIENCES PÉNALES ET DE CRIMINOLOGIE (ISPEC) DE L'UNIVERSITÉ D'AIX-MARSEILLE.

Pour ma part, j'ajouterais ici quelques mots au sujet de la revue Problèmes actuels de science criminelle, éditée depuis 1985 par Laboratoire de droit pénal et de science criminelle (LGDJ Lextenso, précédemment Presses universitaires d'Aix-Marseille – PUAM), Collection : Institut de sciences pénales et de criminologie (ISPEC) ; Sous-collection : Centre de recherche en matière pénale (CRMP). Elle a été créée par le pénaliste Fernand Boulan, Doyen à l'époque de la Faculté de droit et ex-directeur de l'ISPEC. Par la suite, ce Doyen honoraire a été malheureusement assassiné par un terroriste en 1993, au Caire en Égypte, lors du Congrès international de droit pénal. Comme quoi un simple pénaliste (et « criminologue » à la mode française) peut être sauvagement abattu, comme n'importe quel citoyen. Il n'y avait pas de lien entre ce statut de professeur d'université et son assassinat car le terroriste visait simplement les touristes étrangers, sans égard à leur profession ou leur statut social. La revue fut dirigée ensuite par les différents directeurs de l'ISPEC, de Jacques Borricand entre 1988 et l'an 2000, en passant par Jean-Yves Lassalle (2000-2008), jusqu'au directeur actuel, le Professeur Jean-Baptiste Perrier.

## L'ISPEC REGROUPE DEPUIS SA FONDATION DANS LES ANNÉES '60 D'ABORD ET AVANT TOUT UNE DOUZAINE DE PROFESSEURS DE DROIT PÉNAL.

Le professeur plus connu historiquement est le Professeur Raymond Gassin (1930-2016). Malgré des liens étroits avec le droit pénal, fort légitimes d'ailleurs puisque l'ISPEC est issu et lié à la Faculté de droit, le Professeur Gassin avait réussi, dès sa nomination à titre de directeur de l'ISPEC dans les années '70, à tenir compte de façon « remarquable » des travaux de la criminologie empirique à la mode nord-américaine pour les enseignements de l'ISPEC et de la Faculté de droit sur le crime, la criminalité, le criminel, la victime, la police, les tribunaux, la prison… Il avait été Professeur invité à l'École de criminologie de l'Université de Montréal pendant deux ans (1972-1974), ce qui lui avait permis de bien connaître et de bien assimiler les

méthodes de recherche de la criminologie empirique nord-américaine, les résultats les plus pertinents des recherches ainsi que les principales composantes théoriques de cette criminologie. Quelques années après ce séjour, il a écrit et publié en 1988 « le » manuel de criminologie français le plus complet et le plus à jour, combinant précisément, pour la première fois en France, les éléments théoriques et empiriques de la recherche en criminologie, non seulement en Amérique du Nord mais également en Europe. Ce manuel célèbre » (j'ose le dire), « Criminologie » (Paris : Dalloz), a été publié et republié avec ajouts significatifs à plusieurs reprises. La dernière version, largement remaniée elle aussi, a été publiée en 2011 en collaboration cette fois avec deux de ses collègues de l'ISPEC, Sylvie Cimamonti et Philippe Bonfils.

Pour sa part, la revue Problèmes actuels de science criminelle reflète donc depuis 1985 cette tradition— à la jonction du droit pénal et de la criminologie. En effet, presque chaque numéro présente non seulement des articles de droit pénal mais également des contributions proprement criminologiques. Une tradition de professeurs invités de juristes et de « criminologues » (au sens nord-américain), à qui l'ISPEC demande une contribution scientifique significative, a permis à la revue de publier des articles fort intéressants sur différents sujets de nature criminologique. Par exemple, une entente officielle entre l'ISPEC , l'École de criminologie et le Centre international de criminologie comparée (CICC) de l'Université de Montréal depuis les années '70 a amené la participation active à cette revue de plusieurs criminologues québécois, tels Denis Szabo, Maurice Cusson, Guy Lemire, Serge Brochu, Jean Dozois et… votre « serviteur » entre autres. Ces criminologues québécois ont d'ailleurs passé plusieurs années sabbatiques à travailler à l'ISPEC et à y écrire plusieurs livres. L'ISPEC contribue donc ainsi, à sa façon, à enrichir de façon « exemplaire » le legs historique de la criminologie « made in France » et « made in America » selon l'expression consacrée. À tout seigneur, tout honneur !

Tout compte fait, la vie des revues francophones en criminologie se porte bien. Certes, nous n'en avons que 9 par rapport aux 46 revues anglophones en criminologie. Toutefois, ces 9 revues sont de grande qualité, à notre avis. Nous n'avons pas à souffrir de la comparaison, j'en suis persuadé, tout en reconnaissant que le corpus criminologique anglophone est évidemment plus prolifique et également fort important et pertinent. Et c'est tant mieux pour la criminologie dans son ensemble. ■


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ABSTRACT

**Un mot ou deux sur les revues francophones en criminologie (1948-2018)**

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This article identifies nine (9) francophone and bilingual criminology journals created over the past 75 years or so, including the Canadian Journal of Criminology and criminal justice (1958-2018). By way of comparison, Normandeau lists some 46 English-language criminology journals. In the second part of the article, the author mentions a French lawyer and criminologist from the University of Aix-Marseille who was "murdered" in Egypt by a terrorist 25 years ago and concludes that the profession of jurist and criminologist is not always as safe as one might think.

# Canadian Journal of Criminology and Criminal Justice

# Revue canadienne de criminologie et de justice pénale

*Canadian Journal of Criminology and Criminal Justice* is a forum for original contributions and discussions in the fields of criminology and criminal justice, including the theoretical and scientific aspects of the study of crime and the practical problems of law enforcement, the administration of justice and the treatment of offenders. This Journal is the technical publication of the Canadian Criminal Justice Association (CCJA).

La *Revue canadienne de criminologie et de justice pénale* publie une évaluation trimestrielle des aspects scientifiques et théoriques de l'étude sur le crime et des problèmes pratiques en ce qui a trait à l'application de la loi, l'administration de la justice et le traitement des délinquants, en particulier dans le contexte canadien. La *RCCJP* met l'accent sur la recherche scientifique originale. Cette Revue appartient à l'Association canadienne de justice pénale (ACJP).

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**The CCJA congratulates BRODY SCOTT as the recipient of a Mount Royal University scholarship** the benefits of which include CCJA membership and editing assistance with the following article-style version of Mr. Scott's winning essay.

# *R. v. Gladue* and *R. v. Ipeelee*: The Canadian CJS's Response to Indigenous Overrepresentation

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***This article reports deficient understanding in Canada of the Indigenous cultural reality and the impact of colonialism as a main factor in the overrepresentation of Indigenous offenders within the Canadian criminal justice system. Brody Scott begins with the government's first attempt to address this issue through the 1996 addition of sentencing principles to the Criminal Code (Section 718.2(e)) that require judges to consider alternatives to imprisonment for Indigenous offenders. Mr. Scott then turns to an appeal case, R v. Gladue (1999), which successfully challenged the lower court's failure to recognize 718.2(e) in relation to a 'serious' crime and also led to the creation of Gladue Reports. Noting that a subsequent Supreme Court ruling, R v. Ipeelee (2002), reaffirmed and clarified certain aspects of Gladue, Brody Scott concludes that these appeals and persistent overrepresentation signal a failure by the lower courts to effectively implement the Canadian Criminal Code when sentencing Indigenous offenders.***

The Canadian government and Supreme Court of Appeal have attempted to reduce the sickening disproportion of Indigenous offenders within the Canadian Criminal Justice System. The first step taken was the introduction of Section 718.2(e) into the *Criminal Code of Canada* (CCC) in 1996. The second major step emerged in the case of *R. v. Gladue* (1999), which successfully challenged noncompliance to 718.2(e). The third step emanated from a subsequent court decision in *R. v. Ipeelee* (2012), which reaffirmed the applicability of 718.2(e). The continued overrepresentation of Indigenous offenders shows that our justice system and the general public need a better understanding of Indigenous culture and the effects of intergenerational trauma in order to achieve social change in Canada. This article will discuss these issues, with a particular emphasis on *R. v. Gladue*, and look at what has changed and what still needs to be done in Canada to stem the extreme overrepresentation of Indigenous people within the justice system.

## *CRIMINAL CODE OF CANADA* (CCC): SECTION 718.2(E)

In 1996, Section 718.2(e) was added to the CCC, whereby "a court that imposes a sentence shall also take into consideration the following principles" (*Criminal Code*, 1985), which include Subsection (e): "all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders" (*Criminal Code*, 1985). This sentencing principle was imposed in an attempt to reduce the extreme overrepresentation of Indigenous peoples by diverting so-designated offenders away from the CJS; yet it has failed to do so for various reasons. One of the most substantial problems of "718.2(e) [initially lay] in the Court's decision to avert its application from serious offences" (Pelletier, 2001, p.479). As we will see, this all changed with Gladue, yet other problems have arisen. It is important to keep in mind that an offender's

"behaviour is not likely to be improved by the prison experience" (*R. v. Gladue*, 1999, para. 56) especially for someone with a traumatic past.

## BACKGROUND ON GLADUE; THE FIRST CHALLENGE TO SECTION 718.2(E) OF THE CANADIAN *CRIMINAL CODE*

Jamie Tanis Gladue was a young Indigenous woman charged with "manslaughter for the killing of her common law husband and… sentenced to three years' imprisonment" (*R. v. Gladue*, 1999). She had suffered a traumatic past including the early death of her mother (Supreme Court of Canada, & SCC, 1999). Since Jamie Gladue was not on reserve land at the time of the murder, Section 718.2(e) was not applied during sentencing (Parrott, 2014). Jamie Gladue appealed her case, challenging Section 718.2(e) to the Supreme Court of Canada. She was dismissed from her appeal more than once. Years later, a lawyer told her she should not have faced any prison time given her circumstances (*R. v. Gladue,* 1999). Eventually, the Supreme Court of Canada ruled that her rights under Section 718.2(e) had been infringed upon, since it "applies to all aboriginal persons wherever they reside, whether on- or off reserve" (*R. v. Gladue*, 1999, para. 93).

## LEGACY OF *R. V. GLADUE*

In 1999, Jamie Gladue's Supreme Court of Canada case resulted in the creation of Gladue Reports for use during sentencing to ensure that judges "recognize how Indigenous offenders' lives have been affected by decades of colonial oppression, in an attempt to end their over-incarceration in Canadian prisons" (Edwards, 2017, para. 6). Gladue Reports are, "a presentencing or bail hearing report, usually prepared by Gladue caseworkers at the request of the judge, defense counsel or Crown Attorney" (National Women's Association of Canada, 2011, para. 3). They are not to be confused with the pre-sentence reports under Section 721 (Istvanffy, 2011); rather, Gladue Reports document the "tragic history, cultural oppression, poverty, abuse suffered and residential school attendance" of an Indigenous defendant (Gladue Sentencing Principles, 2018). To afford a more restorative approach Judges must consider the following factors under Section 718.2(e):

> (a) the unique systemic or background factors which may have played a part in bringing the particular Aboriginal offender before the courts; and (b) the types of sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of his or her particular Aboriginal heritage or connection (Legal Services Society, 2013).

While some provinces have adopted Gladue courts and attempted to implement Gladue reports to lower the Indigenous incarceration rates, other provinces have not. In 2015, the National Judicial Institute reported "that some aboriginal offenders are moving towards wholeness and rehabilitation as a result of either their diversion from the justice system in Aboriginal court or the treatment they received as part of sentence in the court" (National Judicial Institute, 2005, p.6). *R. v. Gladue* was a step forward as it brought about the creation of Gladue reports and Gladue courts to help ensure restorative sentencing for Indigenous peoples.

## *R. V. IPEELEE*, 2012: REAFFIRMATION OF GLADUE AND CLARIFICATION ON BREACHES

In 2012, another major Supreme Court ruling *R. v. Ipeelee*, challenged specific definitions and applications of *R. v. Gladue*, in particular its applicability to offenders in breach of "long-term supervision orders" (*R. v. Ipeelee,* 2012). Mr. Ipeelee had experienced a similar loss as Jamie Gladue. Mr. Ipeelee's involvement within the justice system was related to his addiction from his traumatic past. He would breach probation orders by using alcohol and be sent back to prison. *R. v. Ipeelee* is important because it confirmed the Gladue ruling and its need for applicability. The case also illustrated that the courts may fail to implement Gladue Reports even for Indigenous offender who (perhaps repeatedly) breach their long-term supervision orders and are sent back to prison. This viscous cycle thus points to a failure of the justice system to provide adequate rehabilitation and reintegration to Indigenous offenders. *R. v. Ipeelee* is also important as it shows a relative implementation failure for Gladue reports. Currently, "Alberta is… the only jurisdiction that has interpreted Ipeelee as mandating that a Gladue report always be made available for Indigenous offenders at sentencing" (Hebert, 2017, para. 44).

## CRITICAL REFLECTION ON THE IMPLEMENTATION OF GLADUE

In 2017 , "575 Gladue reports [were made in Alberta] and close to 300 in Ontario" (Goodwin, 2018, para. 9). Other provinces, such as Saskatchewan, have not adapted the principles of Gladue. As Christina Goodwin, a Saskatchewan lawyer, explains, "there

have been under 75 done… since 1999, and the Indigenous incarceration rate is very high in this province compared to other provinces" (Goodwin, 2018, para. 6). Of the, "25 reports [Goodwin] has prepared over three years, she can only recall one case where the judge adopted the suggestions" (Goodwin, 2018, para. 8).

Gladue Reports at first seemed to be a major step towards truth and reconciliation, but there is little to no data to prove that Gladue courts have actually lowered incarceration rates. Problems have been cited, such as "it usually takes about two months for one writer to complete a report" or "this is far too long a time frame" (Jackson, 2017, para. 2). Other problems exist, such as those pointed out by the Aboriginal Legal Services of Toronto: "Gladue Reports are only prepared following a guilty plea or a finding of guilt" (Clark, 2016, p.29), which in way does not encourage a sense of rehabilitation and reintegration. The Saskatchewan Court of Appeal has avoided the use of Gladue reports and "has been called out by legal scholars" (Macdonald, 2016, para. 40) for its comments that "Gladue will make little, if any, difference in the sentencing of Aboriginal Offenders in serious cases" (Macdonald, 2016, para. 40). It is a sad truth, but "the reality is that despite the enactment of Section 718.2(e) and Gladue, rates of Aboriginal over-representation continued to rise" (Rudin, 2008, p.701).

In Debra Parkes 2012 study, she determined that, "in 2007/2008, Indigenous persons comprised 21% of all admissions to provincial jail in Newfoundland and British Columbia, 35% in Alberta, 69% in Manitoba, 76% in the Yukon, 81% in Saskatchewan, and 86% in the Northwest Territories" (Parkes & Milward, 2012, p.85). According to Statistics Canada (2014/2015), Indigenous people in custody composed the following percentages of incarcerated individuals: Newfoundland 30%, British Columbia 31%, Manitoba 72%, Yukon 71%, Saskatchewan 77% and Northwest Territories 86%. The incarceration statistics for Alberta have no figures "due to the unavailability of data" (Statistics Canada, 2016).

Another disproportion can be seen by comparing the percentage of the Indigenous population to the percentage of incarcerated individuals in each province. For example, the Indigenous population in Saskatchewan comprises just 16% of the total population but 77% of those incarcerated (Statistics Canada, 2016). In Manitoba, the Indigenous population is 17% of the total population but over 72% of those incarcerated (Statistics Canada, 2016). In the Northwest Territories, the population of Indigenous peoples is just over 50%, yet the percentage of Indigenous offenders is close to 90% (Statistics Canada, 2016). These statistics show the need for change.

Statistics in Canada concerning the 2015/2016 adult correctional services operating expenditures, which "totalled over $4.6 billion" are staggering (Statistics Canada, 2017). The average cost to house an inmate in Canadian prisons in 2015/2016 per day averaged two hundred dollars a day per inmate (Statistics Canada, 2017) and more than double that in penitentiaries. Given the over incarceration statistics, it stands to reason that a great deal of money could more effectively be allocated to many other areas should this disproportionality be stemmed; for example, into the Indigenous communities for improved reintegration techniques, crime preventative strategies, drug and alcohol treatment, and healing and rehabilitation.

## STEPS IN THE RIGHT DIRECTION

Awareness of Indigenous people and culture is being introduced in our society in a variety of ways. Indigenous studies courses, such as those here at Mount Royal University, aim to study Indigenous people from a criminal justice perspective. Other universities, such as University of Alberta, have introduced programs on "Aboriginal Justice Externship on Gladue Sentencing Principles" (University of Alberta, 2017). This initiative was "designed to develop competency in working with Indigenous accused and a greater understanding of legal, social, historical and contemporary contexts for Gladue principles in sentencing" (University of Alberta, 2017, p.12). Introducing Indigenous studies programs helps bring about a change in perspective of future generations through information and education on the true history and facts. Such programs are a step in the right direction but are in short supply.

## CONCLUDING REMARKS

Incarceration and recidivism rates for Indigenous offenders has not decreased since the implementation of Section 718.2(e) and Gladue reports some twenty years ago. Society must better understand Indigenous culture and the impact of the abuse Indigenous people have historically suffered in

Canada. Changing the future direction of law enforcement and legal outcomes involving Indigenous people will not be easy and must coincide with true social change. The fact that Indigenous overrepresentation within our Canadian justice system has not declined makes this clear. Change is needed at all levels; from police to judges and from the general public to educated scholars. The extreme overrepresentation of Indigenous people within the justice system must be re-scrutinized and programs such as Gladue and section 718.2(e) reassessed and possibly restructured. Section 718.2(e) is not required by courts; therefore, its implementation has never been solidary. Section 718.2(e) offers suggestions that the courts should abide by, yet they are not mandatory. The rates at which Indigenous people are being incarcerated is as sickening as was their past enclosure in residential schools. ■

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## RÉSUMÉ

### *R. v. Gladue* and *R. v. Ipeelee*: The Canadian CJS's Response to Indigenous Overrepresentation


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Cet article signale que la compréhension déficiente de la réalité culturelle autochtone et de l'incidence du colonialisme au Canada constitue un des principaux facteurs de la surreprésentation des délinquants autochtones au sein du système de justice pénale canadien. Mr. Scott aborde d'abord la première tentative du gouvernement de remédier à ce problème par l'ajout en 1996 de principes de détermination de la peine au *Code criminel* (alinéa 718.2[e]) qui obligent les juges à prendre en considération d'autres recours que l'emprisonnement pour les délinquants autochtones. Il passe ensuite au dossier *R. c. Gladue* (1999), lequel a contesté avec succès la non-reconnaissance de l'alinéa 718.2(e) par les tribunaux inférieurs dans le cas d'un crime grave et a également mené à la création des rapports Gladue. En soulignant qu'une décision subséquente de la Cour suprême, *R. c. Ipeelee* (2002), avait permis de réaffirmer et de clarifier certains aspects de l'affaire Gladue, Mr. Scott conclut que ces interventions en appel et la surreprésentation persistante dénotent un manquement de la part des tribunaux inférieurs à appliquer efficacement le *Code criminel* canadien lors de la détermination de la peine des délinquants autochtones.

# Solitary Confinement as a Function of the State's Power Over Life

**JENNIFER MOORE**
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***In this interesting article, Jennifer Moore (undergrad, Bishop's University, Sherbrooke, Quebec) probes excesses of state power over the lives of its citizens, and particularly through the criminal justice system. Recalling past abuses of state power in relation to corporal punishment, such as public hangings, whippings, etc., Moore sets the stage for a lively and well-informed discussion of current abuses of state power in prisons within a context of solitary confinement and Dr. Lisa Guenther's notion of social death.***

Displays of state power were historically carried out in public through highly torturous forms of corporal punishment such as whipping, branding, or being locked in the stocks. Today, a narrow prison cell and the clanging of doors and locks have completely replaced such grandiose displays of flesh and blood. The state no longer seeks to inflict visible bodily harm onto those it deems criminal, but its prisons regularly make use of an equally inhumane mode of punishment: The state's power over life is now carried out through involuntary segregation that tends to target specific prison populations, such as Indigenous women (NWAC, 2017), and those who have mental health concerns (Halvorsen, 2018); this can sometimes have dire and even deathly consequences.

## SOCIAL DEATH THROUGH SOLITARY CONFINEMENT

Lisa Guenther – Canadian philosopher, activist and Queen's National Scholar in Political Philosophy and Critical Prison Studies–defines social death as "the effect of a social practice in which a person or group of people is excluded, dominated, or humiliated to the point of becoming dead to the rest of society" (2013, p.20). With solitary confinement, a prisoner's ability to perceive the world and to sustain a meaningful connection with his/her existence is severely impaired; as humans are social beings who rely on interactions with others to make sense of the external world (Bowden, 2014). When we isolate a prisoner, we deprive them of these important relationships with others, and of 'self' by removing meaningful contact and support, which are necessary for experiencing the world in a coherent manner (Guenther, 2013). This is an essential component of human life and is thus also true for those incarcerated in solitary units, deprived of human contact for extended periods. For these reasons, extended solitary confinement has recently been ruled unconstitutional in two provinces in Canada, Ontario and British Columbia (Lehn, 2019).

Five Omar Mualimm-ak (2013), who was subjected to five consecutive years of solitary confinement at Elmira Correctional Facility in New York (Guenther, 2014), details how most cells had solid steel doors without windows, and how no photographs or pictures could be taped to the walls. He states, "there was nothing to hear except echoing voices from other parts of the prison. I was so lonely that I hallucinated words coming out of the winds". He further explains that he was devoid of much hu-

man contact with his meals being pushed through a slot and doors being activated by buzzers. Even medical treatment was provided with little contact, as Mualimm-ak received his insulin shots for diabetes by extending his arm through the food slot in the cell's door (Mualimm-Ak, 2013).

One does not have to look hard to find a similar case in Canada, such as that of Adam Capay, a young Indigenous man confined to isolation for a total of 1,647 days at Ontario's Thunder Bay Jail (White, 2019), demonstrates the gravity of the situation in Canada. Prison staff ensured Capay's stay in segregation involved complete social and physical isolation, noting in his file to avoid discussions with him, and allowing for yard visits only once or twice a month (White, 2019). The lights in his cell were on twenty-four hours a day due to safety concerns over self-harm, which for Capay included a risk of cutting and bashing his head against the walls of his cell (White, 2019). As Guenther illustrates, such are the conditions of social death:

> They see things that do not exist, and they fail to see things that do. Their sense of their own bodies—even the fundamental capacity to feel pain and to distinguish their own pain from that of others—erodes to the point where they are no longer sure if they are being harmed or are harming themselves. (Guenther 2013, p. 1)

This deprivation of social relations, a production of the state's power over life, leads to an inmate's complete loss of connectedness to the social world, to others, and to themselves.

## SOLITARY CONFINEMENT: TARGETED POPULATIONS – INDIGENOUS WOMEN

The state's use of its power over life is even more evident with targeted populations, as seen in the overrepresentation of Indigenous women in both prison and solitary confinement. According to the Native Women's Association of Canada (NWAC: 2017), solitary confinement is "a particularly harmful practice for individuals with past histories of trauma, abuse, or self-harm, often exacerbating the psychological and emotional wounds and issues that go with these histories" (2017, p.3). This specifically applies to Indigenous women with backgrounds of violence and intergenerational trauma as a result of colonial patriarchy. Though Indigenous women constitute less than 5% of the Canadian population, they make up 39% of the women's prison population and up to 50% of federal segregation placements (Ibid, p.4). In addition to being more likely to be involuntarily segregated, they are also more likely to endure harsher, longer segregations than non-Indigenous women (Ibid, p.5). This demonstrates the state's power in creating and maintaining spaces of violence and death for marginalized groups.

Although the Government of Canada has acknowledged the harm caused by solitary confinement, the reforms imposed upon the practice of confinement, such as Bill C-83 (2019), fail to address or enact legitimate change upon the state's power in targeting marginalized groups, such as Indigenous women. In *R v Gladue* (1999), the Supreme Court of Canada ruled that sanctions other than imprisonment should be considered during criminal sentencing of Indigenous people due to their overrepresentation in the prison population, leading to the creation of the Gladue principle.

The result of a 1999 Supreme Court Decision, the Gladue principle (section s. 718.2e of the *Criminal Code of Canada*) mandates judges to consider the "sociological and historical factors stemming from colonialism and racism… whenever the liberty interests of an Aboriginal person are at stake" (NWAC, 2017, p.11). Despite this long-standing principle, the state fails to give the same consideration to the most marginalized populations when it comes to solitary confinement; one of the most repressive practices that directly impacts Indigenous women.

In 2017, the Office of the Correctional Officer stated that there have been insufficient considerations of the Gladue principle in relation to correctional decision-making, and there is little evidence of how it has been legitimately incorporated (NWAC, 2017, p.12). Healing lodges for Indigenous women are one of the alternatives suggested by the government in Gladue, yet over 90% of Indigenous women in prison are prevented from accessing these services due to their security classification (p.13). All of this further exemplifies the state's control in removing one's rights, social identity and social connectedness, and thus contributing to their social death.

## SOLITARY CONFINEMENT: TARGETED POPULATIONS – WOMEN WITH MENTAL HEALTH CONCERNS

Another part of the population particularly targeted by the state's power over life are women with mental health concerns, who are also disproportionally segregated within prisons. For incarcerated women with mental health issues, the practice of solitary confinement too frequently forces them into isolation as opposed to providing them with treatment (White, 2018). Segregation is consistently used as punishment or "time out" for disciplinary violations in prison, therefore targeting those with mental health concerns, as they may find it difficult to abide by the rules (Halvorsen, 2018, p.206).

According to Shourd (2014), placing women with mental illnesses in solitary confinement may constitute punishment for behaviour beyond their control if they fail to conform to staff expectations. A study conducted by psychiatrist Terry Kupers demonstrates that those with mental health concerns "are prone to act bizarrely and inappropriately because of their psychiatric condition", and that "acting out and rule breaking can be signs of a mental disorder that is not adequately treated" (Halvorsen, 2018, p.211). As such, women in prison living with these conditions are often segregated due to behaviour over which they have little or no control, thus being further deprived of social relationships and suffering a loss of social identity.

Psychiatrist Stuart Grassian, upon interviewing over 200 solitary inmates, found that solitary confinement may cause psychiatric syndromes, such as hyper-responsitivity to external stimuli, perceptual distortions, hallucinations, panic attacks, obsessional thoughts and problems with impulse control (Mcdonald, 2018). The absence of social contact, sensory deprivation and extreme idleness may lead to "severe psychological debilitation" even among healthy adults, whereas those affected by mental illness are said to deteriorate at a faster pace in isolation (Shourd, 2014). With that being said, it is important to question whether these effects are an issue of mental health, or if they are "simply' symptomatic of their loss of social connectedness and ensuing social death.

Regardless, as stated by Kupers, "80 percent of incarcerated women have been sexually or physically abused, and the emotions that everyone has in solitary are going to be much stronger for them. In isolation, these emotions will magnify and keep reverberating if there is no one to talk to" (Shourd, 2014). Additionally, treatment, prescription drugs, and other forms of interventions, are routinely denied these inmates (Manson, 2016). This practice exacerbates the symptoms of illness, provokes recurrence, increases the risks of self-harming or suicidal behaviours (Manson, 2016), and can arguably be said to lead to after effects that resemble symptoms of mental illness in those who were not suffering from mental illness prior to the isolation period. This all leads us to question why confinement has not been prohibited, especially for inmates suffering from mental health issues.

## CONCLUSION

Upon examining how solitary confinement acts as a function of the state's power over life, there seems to be overwhelming evidence to suggest that the actions being taken by the state to reform the practice of isolation are insufficient and also fail to address the issue of social death caused by administrative segregation. Though policy changes such as Bill C-83 may bring reform to the practice of isolation, they fail to enact legitimate change in regards to whom the state targets and the impacts of such. A major reform in the penal system is required in order to put an end to the practice of depriving the psychological and physiological integrity of people in prison; it is one of the most repressive ways the state continues to exercise power over the lives of marginalized groups. ■

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RÉSUMÉ

**Solitary Confinement as a Function of the State's Power Over Life**

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Dans cet article fort intéressant, Jennifer Moore (étudiante de premier cycle à l'Université Bishop's, Sherbrooke, Québec) se penche sur les abus de pouvoir de l'État dans la vie de ses citoyens, en particulier par l'entremise du système de justice pénale. En relatant les abus de pouvoir commis dans le passé par l'État sur le plan des châtiments corporels, notamment les pendaisons et flagellations publiques, Moore jette les bases d'une discussion animée et bien informée sur les abus de pouvoir actuels de l'État dans les prisons au regard d'un contexte d'isolement cellulaire et de la notion de mort sociale formulée par Lisa Guenther.

# Prison Reform

**MARISA LINSCOTT-WILTSHIRE**
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***In this compelling semi-freestyle article, Marisa Linscott-Wiltshire notes that the Canadian CJS aims to provide a fair, compassionate system, but that prison reform is needed to make this possible—especially in regards to members of groups affected by discrimination. Recalling strain theory and social disorganization theory, this student author also bemoans the fact that access to certain things like employment, education, and necessities is unevenly accessible across the class, race and gender continuum and suggests that discrimination and social inequity are leading some Canadians to criminal behaviour. The author frames her take on the need for prison reform on an emerging model of restorative justice – Sawbonna – being developed by one of her professors, Margot Van Sluytman.***

In today's Canadian society, prison reform has become a greater concern for many, across the country. The Canadian criminal justice system aims at providing a fair, compassionate and just system: justice for those who've been victims of crime, punishment for those who've committed crimes, and the safety of the public. What the justice system fails to provide is adequate means of deterrence and rehabilitation to effectively prevent the involvement and re-involvement of potential offenders and re-offenders. Some of the biggest concerns regarding prison reform in Canadian prisons are the over-representation of African-Canadians and Indigenous Peoples; mistreatment of mentally ill inmates; overcrowding that causes double-bunking and poses a safety threat to both inmates and guards; violence within the prisons; lockdowns; conduct of strip searches; solitary confinement; access to health care; lack of programming; limited opportunities to connect with loved ones; etc. (Department of Justice, 2018).

This is distressing, as individual rights are being violated, abused, and absolutely ignored due to the fact they are incarcerated. While these are all important issues, certain ethnic groups also face additional challenges, due to systemic racism in the Canadian criminal justice system. Systemic racism means that policies and practices within an organization create a disadvantage for racialized individuals. Systemic racism manifests in two ways: as institutional racism (i.e. racial discrimination by authority figures) and structural racism (i.e. inequalities in the functioning of society that exclude specific groups from participation in major social institutions (Ontario Human Rights Commission, 2017).

Speaking from personal experience of having a loved one involved in the criminal justice system, I've seen and heard firsthand about the inhumane treatment that minorities face while incarcerated and it's extremely saddening. A former professor of mine, Margot Van Sluytman, introduced my class to the notion of a shared humanity iterated through the Zulu greeting 'Sawbonna', which means 'I See You'. What this means is we are all connected, we may come from different countries, races, speak different languages and follow different religions, but the one thing we all have in common and that must be remembered is we are ALL human beings. Our race, religion, language, social status, etc. are social constructs that make us different, but it doesn't make any person less or more of a human. It seems that many people are becoming more ignorant to a lot of things that are happening and it's only getting worse; But who are we to blame? We are always looking for someone to blame, but shouldn't we really be blaming ourselves? After all ignorance is no excuse under the law.

In Canada, everyone has four fundamental freedoms: freedom of conscience and religion, freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication, freedom of peaceful assembly, and freedom of association(Legislative Services Branch. (2018). This gives every single one of us the right to voice our concerns and address what we believe is right or wrong, regardless of our physical character, social status, or our DNA. The most frustrating part about this is that everyone is aware of this right, but when it comes to advocating on behalf of others who are unable to do so or who aren't being heard, people tend to think they can ignore it if it's not directly affecting them; but, in reality, ignoring a problem is part of the problem.

In regards to prison reform, many people resort to the adage 'if you do the crime you must do the time', but they fail to realize that the prison system is not working, that there's more to it than just locking people up! It's seemingly a vicious cycle; you do your time, which involves things like being on lockdown in an overcrowded cell for days on end and facing further isolation from an inability to maintain contact with your loved ones because you can only communicate through collect calls, which can be expensive, or visiting them through a glass window. You may leave with nothing except what you had when you got arrested.

We strip prisoners of almost all rights, but we leave them with the right to refuse programming and education. They leave with no more employable skills than they had upon incarceration, with no way to make money and facing the stigma of a criminal record, and may have no home. You need to survive and recidivists can be seen to have found an illegal means of survival. Is it because they weren't given the opportunity to get on their feet. Do some end up back in jail because they can't function adequately in society… and the cycle repeats? The issue of solitary confinement (and emotional deprivation and isolation) is clearly beyond inhumane. How can we expect to isolate someone, regardless of their mental stability, not only from their loved ones and the rest of society but also from any human contact aside from prison guards for 24 hours a day? How can one stay mentally sane when they're deprived of everything that one needs for mental health? Do some end up back in jail because they can't function adequately in society?

There are three common problems that relate to crime – higher level of ethnic and mixed culture mixing, poverty, and physical dilapidation (Siegel & McCormick, 2016). Criminal behavior is the outcome when society doesn't provide adequate and approved means to achieve valued goals. In some communities, access to certain things like employment, education, and necessities is not evenly accessible across the class, race and gender continuum. Two theories, Social Disorganization Theory (1942) and Strain Theory (1938), are useful to analyze crime and the causes of crime in relation to environment. Clifford Shaw and Henry McKay's analysis of social disorganization theory found that crime increases when at-risk individuals reside in lower class areas and are exposed to hostility. They found three common problems: higher level of ethnic and mixed culture mixing, poverty, and physical dilapidation. Robert Merton's strain theory explains how criminal behavior can result from society's failure to provide citizens with adequate means to achieve socially valued goals. Therefore, those who don't have access to the tools for success are more susceptible to deviant behaviors.

In correlation to prison reform, minorities are not only disproportionately represented in Canadian prisons, they were already at a disadvantage and thus at-risk long before incarceration. Some of those incarcerated for sexual offenses were themselves abused sexually as children, didn't receive the help they needed at the time, and ended up committing similar crimes. So the underlying issue here is to look at the individual circumstances and find solutions for this group of offenders. In these cases, prison seems to be just a temporary fix to get them off the streets.

As a society, we need to stop overlooking others, and take a close look at what's happening in our society. What if it was your loved one? Is it normal that people wake up every morning wondering if their loved one was able to fill their belly, let alone receive the nutrition needed for proper brain function—or if they've had to defend themselves in a fight? Would it be fair if your loved one were mentally ill and locked in a cage with a cement bed lined only with a thin mat for days on end and no contact with anyone—because the prison structure and staff are deficient in incarceration? Your answer is most likely no, so why is it okay for others? I'm speaking on behalf of those who have been or pres-

ently are incarcerated and facing cruel and unusual treatment in our Canadian criminal justice system. Change is needed. Take a stand on prison reform, to ensure that justice is served justly, not unjustly. We have a shared humanity, and we need to help and not shun one another. Sawbonna – I see you! ■


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RÉSUMÉ

**Prison Reform**

**MARISA LINSCOTT-WILTSHIRE**
Cours *Global Citizenship*, Centennial College (ON), Campus de l'avenue Progress

Dans cet article éloquent de style semi-libre, Marisa Linscott-Wiltshire fait remarquer que le système de justice pénale canadien vise à fournir un système juste et compassionnel, mais qu'une réforme pénitentiaire est requise pour y arriver, en particulier pour les membres des groupes touchés par la discrimination. En rappelant la théorie de la tension (Merton) et la théorie de la désorganisation sociale, cette auteure étudiante déplore également le fait que l'accès à certains aspects comme l'emploi, l'éducation et les besoins essentiels n'est pas le même entre les classes, les ethnies et les genres. De même, elle suggère que la discrimination et l'injustice sociale conduisent certains Canadiens à des comportements criminels. L'auteure étaye son point de vue sur le besoin d'une réforme pénitentiaire par un modèle émergeant de justice réparatrice, le projet Sawbonna, mis au point par l'une de ses professeures, Margot Van Sluytman.

ICPA
International Corrections & Prisons Association

**External Prison Oversight & Human Rights Network**
**Howard Zinger, Chair**

E-BULLETIN: No. 2 / March 15 / 2019 (Solitary Confinement)

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# Segregation: the 'State of Play' in Canada

**By Honourable Justice P. Cole**
**Ontario Court of Justice, Canada**

"There is a point in the recent fictional film about the legal career of U.S. Supreme Court Justice Ruth Ginsburg where she argues before three very conservative appellate judges that "laws and assumptions about what has until now been acceptable gender discrimination are no longer valid, because the culture has changed". If several recent trial-level decisions from all across the country are indicative of a similar cultural shift, Canadian courts' easy acceptance of penal administrators' dogmatic insistence that lengthy – sometimes indeterminate – periods of time in segregation are essential to control inmate behavior are certainly being questioned and challenged. In this brief article, I wish to summarize the major cases decided in the last year or so……."

## To read this article, go to WWW.ICPA.ORG

From ICPA' Networks menu, select "External Prison Oversight and Human Rights"; and then, in the lower left-hand corner of the window, click **Expert Network on External Prison Oversight & Human Rights Newsletter (Issue 2)** (https://files.constantcontact.com/d0a15046701/eb1a0741-16c8-4d52-8dbe-f2f53074e5b0.pdf)

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**2019 NATIONAL CONFERENCE ON CRITICAL PERSPECTIVES IN CRIMINOLOGY AND SOCIAL JUSTICE**

**THEME - THÈME** * The tensions between theory and practice, situating academic perspectives in the context of populist governance movements

**PLACE - ENDROIT** * Brantford, Ontario, Canada

**INFORMATION** * NCCP@wlu.ca

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MAY 7-9 MAI 2019

**5TH BIENNIAL ALBERTA CRIMINAL JUSTICE SYMPOSIUM**
**MacEwan University's Department of Sociology, The John Howard Society of Alberta, and Alberta Justice and Solicitor General (Correctional Services Division)**

**THEME - THÈME** * Considering New Approaches to Rehabilitation and Correctional Reform

**PLACE - ENDROIT** * Robbins Health Learning Centre, City Centre Campus, MacEwan University, Edmonton (AB)

**INFORMATION** * macewan.ca/acjs and/et eventregistration@macewan.ca

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OCTOBER 16-18 OCTOBRE 2019

**ANNUAL CONFERENCE OF THE CANADIAN INSTITUTE FOR THE ADMINISTRATION OF JUSTICE (CIAJ) / INSTITUT CANADIEN D'ADMINISTRATION DE LA JUSTICE (ICAJ)**

**THEME - THÈME** * The Impact of Artificial Intelligence and Social Media on Legal Institutions

**PLACE - ENDROIT** * Le Bonne Entente Hotel, Quebec City (QC)

**INFORMATION** * ciaj-icaj.ca/en/upcoming-programs/2019-annual-conference/

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OCTOBER 27 OCTOBER – NOVEMBER 1 NOVEMBRE 2019

**INTERNATIONAL CORRECTIONS AND PRISONS ASSOCIATION (ICPA) 21ST AGM AND ANNUAL CONFERENCE**

**THEME - THÈME** * Strengthening Our Correctional Cornerstones: Rights, Dignity, Safety and Support

**PLACE - ENDROIT** * Hotel Panamericano, Buenos Ares, Argentina

**INFORMATION** * icpa.org/eventS

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NOVEMBER 6-9 NOVEMBRE 2019

***CCJA CONGRESS 2019 / **CONGRÈS ACJP 2019**

***Organized jointly by the Canadian Criminal Justice Association (CCJA) and the Société de criminologie du Québec (SCQ)**
****Organisé conjointement par la Société de criminologie du Québec et l'Association canadienne de justice pénale (ACJP)**

**THEME - THÈME** * 100 Years of Criminal Justice / 100 ans de justice pénale

**PLACE - ENDROIT** * l'Hôtel Le Concorde de Québec, Quebec City

**INFORMATION** * ccja-acjp.ca/pub/en/news/congress-2019-call-for-papers
ccja-acjp.ca/pub/fr/evenement/congres-2019-100-ans-de-justice-penale

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MARCH 26-30, 2019

**ACJS 56th ANNUAL MEETING**

**THEME - THÈME** * "Justice, Human Rights, and Activism"

**PLACE - ENDROIT** * Baltimore Marriott Waterfront Hotel, Baltimore, MD

**INFORMATION** * acjs.org/page/2019AnnualMeetin

ACJS DOCTORAL SUMMIT 2019

**INFORMATION** * acjs.org/page/Doc_Summit

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P7